

test must not exceed 90 percent of the test pressure. If, due to failure of test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is lower.

(d) Cylinders must be tested as follows:

(1) At least one cylinder selected at random out of each lot of 200 or less must be tested as described in paragraphs (a), (b), and (c) of this section, to at least two times service pressure. If a selected cylinder fails, then two additional specimens must be selected at random from the same lot and subjected to the prescribed test. If either of these fails the test, then each cylinder in that lot must be so tested; and

(2) Each cylinder not tested as prescribed in subparagraph (1) of this paragraph must be examined under pressure of at least two times service pressure and must show no defect. A cylinder showing a defect must be rejected unless it may be requalified under § 178.56-18(a).

(E) In § 178.58-11(a), subparagraph (1) is amended, and subparagraph (5) is canceled as follows:

§ 178.58 Specification 4DA; inside containers, welded steel for aircraft use.

§ 178.58-11 Heat treatment.

(a) * * *

(1) All containers must be quenched by oil, or other suitable medium except as provided in subparagraph (4) of this paragraph.

(5) [Canceled]

This amendment is effective September 30, 1972; however, compliance with the regulations as amended herein is authorized immediately.

(Secs. 831-835, Title 18, U.S.C. sec. 9, Department of Transportation Act, 49 U.S.C. 1657; Title VI, sec. 902(h), Federal Aviation Act of 1958, 49 U.S.C. 1421-1430 and 1472(h))

Issued in Washington, D.C., on July 17, 1972.

G. H. READ,
Captain, Alternate Board Member,
for the U.S. Coast Guard.

JAMES F. RUDOLPH,
Board Member, for the
Federal Aviation Administration.

KENNETH L. PIERSON,
Alternate Board Member, for the
Federal Highway Administration.

MAC E. ROGERS,
Board Member, for the
Federal Railroad Administration.

[FR Doc.72-11250 Filed 7-20-72;8:48 am]

Chapter X—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Ex Parte No. MC-19 (Sub-No. 15)]

PART 1056—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE OR FOREIGN COMMERCE

Practices of Motor Carriers of Household Goods; Reservation of Vehicle Space by Shippers

Amended order. At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C. on the 10th day of July 1972.

It appearing, that in the order heretofore entered in this proceeding the Commission prohibited household goods carriers from making estimates and/or charges based on the reservation of a portion of the space of a vehicle; and

It further appearing, that a complaint has been filed in the U.S. District Court for the District of Columbia, Civil No. 878-72, Movers & Warehousemen's Ass'n v. United States, attacking the Commission's order insofar as it applies to Part (2) and Part (3) moves; and

It further appearing, that by order dated June 28, 1972, this proceeding was reopened for further consideration insofar as it applies to shipments of the type defined in 49 CFR § 1056.1(a) (3), namely, "articles, including objects of art, displays, and exhibits, which because of their unusual nature of value require the specialized handling and equipment usually employed in moving household goods;" and

It further appearing, that in light of the court case described above, and in order to keep the matter in perspective, further consideration should also be given to this order insofar as it applies to shipments of the type defined in 49 CFR § 1056.1(a) (2), namely, "furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals, or other establishments, when a part of the stock, equipment, or supply of such stores, offices, museums, institutions, hospitals, or other establishments;" and good cause appearing therefor:

It is ordered, That this proceeding be, and it is hereby, reopened on our own motion for further proceeding in the manner hereinafter set forth solely with respect to shipments of the particular types of articles defined in § 1056.1(a) (2) of the regulations of the Interstate Commerce Commission (49 CFR 1056.1(a) (2)), namely, "furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals, or other establishments, when a part of the stock, equipment, or supply of such stores, offices, museums, institutions, hospitals, or other establishments;" and in § 1056.1(a) (3) of the regulations of the Interstate Commerce Commission (49 CFR

1056.1(a) (3)), namely, "articles, including objects of art, displays, and exhibits, which because of their unusual nature or value require the specialized handling and equipment usually employed in moving household goods;"

It is further ordered, That no oral hearing is contemplated but that parties may submit for consideration verified statements in support of their respective positions in the manner hereafter set forth;

It is further ordered, That the persons named in Appendix A¹ be, and they are hereby, permitted to intervene with the right to appear and participate in all further proceedings:

It is further ordered, That in order to give the interested persons, not already parties an opportunity to participate in the matter, notice of this order shall be published in the FEDERAL REGISTER, with the provisions that such interested persons can become parties merely by indicating in writing their desire to participate before August 7, 1972;

It is further ordered, That after expiration of the date fixed for filing of intention to participate in the next preceding paragraph, the Commission shall prepare and make available to all parties to the proceeding a list containing the names and addresses of all parties upon whom all initial statements and replies thereto must be served, and at the time of service of the service list, the Commission will fix the time within which initial statements and replies thereto must be filed; and

It is further ordered, That orders heretofore entered in this proceeding on February 28, 1971, and April 27, 1971, remain in full force and effect as to all shipments other than those defined in 49 CFR 1056.1(a) (2) and (3), as more fully described above.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[FR Doc.72-11315 Filed 7-20-72;8:53 am]

Title 6—ECONOMIC STABILIZATION

Chapter III—Price Commission

PART 300—PRICE STABILIZATION

Accounting and Financial Reporting Requirements

The purpose of this amendment is to add a new Subpart B "Accounting and Financial Reporting Requirements" to Part 300 of the Price Commission's regulations, and to add as new Appendix IV

¹ Filed as part of the original document.

thereto certain procedures for implementing the new subpart.

Information submitted to the Price Commission to date has generally not conformed in all material respects with the accounting and reporting requirements of the general instructions to Form PC-50 and PC-51 and often have not been in accordance with generally accepted accounting principles and with the practices customarily followed by the firm, applied consistently. Further, reconciliations from audited or published financial reports to data submitted on Price Commission reports were often omitted or incomplete.

The Price Commission has adopted this regulation requiring that certain procedures be performed by independent public accountants as outlined in Appendix IV to ensure that the accounting information submitted to the Commission is prepared on a consistent basis and that the information submitted is sufficient for effective regulation. Similar requirements have historically proven successful by other regulatory agencies. Procedures are limited to provide maximum benefit to the reporting firm and the Price Commission at a reasonable cost to the firm, and because of time and cost considerations, audited submissions are not required by this regulation.

Because the purpose of this amendment is to provide for the use of certain procedures and to provide immediate guidance and information as to the price stabilization program, notice and public procedure thereon are unnecessary and impracticable, and good cause exists for making them effective in less than 30 days.

(Economic Stabilization Act of 1970, as amended, Public Law 91-379, 84 Stat. 799; Public Law 91-558, 84 Stat. 1468; Public Law 92-8, 85 Stat. 13; Public Law 92-15, 85 Stat. 38; Public Law 92-210, 85 Stat. 743; and Executive Order No. 11640, as amended)

In consideration of the foregoing, Part 300 of Title 6 of the Code of Federal Regulations is amended as set forth below effective July 20, 1972.

Issued in Washington, D.C. on July 19, 1972, by direction of the Commission.

W. DAVID SLAWSON,
General Counsel, Price Commission.

1. The table of contents of Part 300 is amended by striking out the entry "Subparts B-E [Reserved]" and inserting the following in place thereof:

Subpart B—Accounting and Financial Reporting Requirements

Sec.
300.221 Procedures required with respect to certain financial information.

Subparts C-E [Reserved]

2. The table of contents of Part 300 is further amended by inserting the following new entry at the end thereof:

APPENDIX IV—PROCEDURES AND REPORTS OF INDEPENDENT PUBLIC ACCOUNTANTS

3. Part 300 is amended by inserting the following new subpart after Subpart A:

Subpart B—Accounting and Financial Reporting Requirements

§ 300.221 Procedures required with respect to certain financial information.

(a) Each person subject to section 13 or 15(d) of the Securities Exchange Act of 1934 and each firm that prepares an audited financial statement on an annual basis shall obtain, for its reports filed with the Price Commission, the services of an independent public accountant to perform the procedures set forth in Appendix IV of this part. Those procedures are considered to be supplementary to periodic Commission examinations for compliance.

(b) This section applies to all filings received by the Price Commission after July 14, 1972, and which include financial information for periods ending after June 29, 1972.

4. Part 300 is further amended by adding the following new Appendix at the end thereof:

APPENDIX IV—PROCEDURES AND REPORTS OF INDEPENDENT PUBLIC ACCOUNTANTS

These procedures in this appendix shall be used by independent public accountants in complying with Subpart B of this part.

Each firm subject to section 13 or 15(d) of the Securities Exchange Act of 1934 and each firm that prepares audited financial statements on an annual basis shall file with Form PC-51, when it covers an annual or semiannual period, a letter or report of the independent public accountant stating that—

For Form PC-51 covering the fiscal year for which an examination of financial statements has been performed, and for each semiannual period for which Form PC-51 is required, the independent public accountant's letter shall set forth that the independent public accountant has performed the following procedures with respect to each reconciliation attached to the filing company's Form PC-51:

1. Compared the amounts shown in the company's report on Form 10-K (or, alternatively, other financial statements) with the related amounts shown in such reconciliations for the corresponding periods.

2. Compared the amounts presented in the reconciliations for "noncovered" activities with sources of data, such as consolidating workpapers, special analyses, etc., which sources of data should be described.

3. Compared the types of "noncovered" activities in the reconciliations for each of the periods reported with the types of "noncovered" activities in similar reconciliations supporting the periods reported on the company's latest Form PC-50.

4. Compared the classification and adjustment amounts pertaining to "covered" activities in the reconciliations for each period reported with the company's underlying data such as consolidating workpapers, special analyses, etc., which documents should be specifically identified for each of such periods.

5. Compared the types of such classifications and adjustments in the reconciliations for each of the periods covered on Form PC-51 with the types of such classifications and adjustments in similar reconciliations supporting the periods reported on the company's latest Form PC-50.

6. Compared the amounts shown in lines 5 through 13 of Form PC-51 with the corresponding amounts shown in such reconciliations for each period reported.

7. Checked the arithmetical accuracy of the totals and subtotals appearing on the

reconciliations for each of the periods reported and on lines 5 through 13 of Form PC-51 for each of the periods reported.

8. Made inquiries of officers of the company as to whether the information set forth in the reconciliations for each of the periods reported complies in all material respects with the requirements of the general instructions of Form PC-51 as they relate to lines 5 through 13.

Each letter or report shall also set forth whether or not information came to the attention of the independent public accountant as a result of the foregoing procedures to cause him to believe that the amounts shown on lines 5 through 13 of Form PC-51 were not compiled in all material respects by use of procedures and accounting principles substantially consistent with those followed by the company in compiling the amounts shown on lines 5 through 13 of the most recently filed Form PC-50 and Form PC-51.

Form of reports. Reports shall be in substantially the following form unless circumstances or conditions, explained by the independent public accountant in the letter or report, demand that they be varied.

a. For Form PC-51 covering all fiscal years for which an examination of financial statements has been performed:

	(Date)
Company and the Price Commission,	(Confidential Treatment Requested)
Washington, D.C. 20508	Re: Fiscal Year ended ----- 19--

Dear Sirs: We are independent public Company and our most recent examination of the consolidated financial statements of ----- Company and its subsidiaries was for the year ended -----, 19-- , upon which we reported under date of -----, 19-- .

At your request, we have performed the following procedures with respect to the consolidated reconciliations attached to the accompanying Form PC-51 prepared by the company for the year ended -----, 19 -- and 19-- :

1. Compared the amounts shown in the company's report on Form 10-K (or, alternatively, other audited financial statements) for the year ended -----, 19-- and 19-- with the related amounts shown in such reconciliations for the years ended -----, 19-- and 19-- .

2. Compared the amounts presented in the reconciliations for "noncovered" activities with (describe source of data, such as consolidating workpapers, special analyses, etc., prepared by the company) for the years ended -----, 19-- and 19-- .

3. Compared the types of "noncovered" activities in the reconciliations for the years ended -----, 19-- and 19-- with the types of "noncovered" activities in similar reconciliations supporting the periods reported on the company's Form PC-50 dated -----, 19-- .

4. Compared the classification and adjustment amounts pertaining to "covered" activities in the reconciliations for the years ended -----, 19-- and 19-- with (describe source of data, such as consolidating workpapers, special analyses, etc.) prepared by the company for such periods.

5. Compared the types of such classifications and adjustments in the reconciliations for the years ended -----, 19-- and 19-- with the types of such classifications and adjustments in similar reconciliations supporting the periods reported on the company's Form PC-50 dated -----, 19-- .

6. Compared the amounts in lines 5 through 13 of Form PC-51 for the years ended -----, 19-- and 19-- with the related amounts shown in such reconciliations for the years ended -----, 19-- and 19-- .

7. Checked the arithmetical accuracy of the totals and subtotals appearing on the reconciliations for the years ended 19-- and 19-- and on lines 5 through 13, of Form PC-51 for the years ended -----, 19-- and 19--.

8. Made inquiries of officers of the company as to whether the information set forth in the reconciliations for the years ended -----, 19-- and 19-- complies in all material respects with the requirements of the general instructions of Form PC-51 as they relate to lines 5 through 13.

Although we have examined and reported on the underlying consolidated financial statements of the company from which certain of the data in the attached reconciliations were derived the foregoing procedures do not constitute an examination of the reconciliations and Form PC-51 in accordance with generally accepted auditing standards and we do not express an opinion thereon. It should be understood that we make no representations as to questions of legal interpretation or as to the sufficiency for the Price Commission's purposes of the procedures enumerated in the preceding paragraph; also, such procedures would not necessarily reveal misstatements of the amounts shown in Form PC-51, line 5 through 13 nor would such procedures necessarily disclose material facts which may have been omitted.

Nothing came to our attention as a result of the foregoing procedures, however, that caused us to believe that the amounts shown on lines 5 through 13 for the years ended -----, 19-- and 19-- of the attached Form PC-51 were not compiled in all material respects by use of procedures and accounting principles substantially consistent with those followed by the company in compiling the amounts shown on lines 5 through 13 of the company's Form PC-50 dated -----, 19-- attached hereto (except as follows): (List the exceptions, if any, including their effect.)

This letter is solely for the company's transmittal to the Price Commission and is not to be used, circulated, quoted, or otherwise referred to outside of the company and the Price Commission. It is requested that this letter and the information submitted herewith be treated as confidential in accordance with Part 311 of the regulations of the Price Commission.

Independent Public Accountant

(Signature)

b. For Forms PC-51 covering semiannual periods and for periods reported on Form PC-50 for which no examination was performed:

Company and Price Commission, Wash-
ington, D.C. 20508
Re: Semiannual period ended -----, 19--

Dear Sirs: We are independent public accountants with respect to ----- Company and our most recent examination of the consolidated financial statements of ----- Company and its subsidiaries was for the year ended -----, 19-- upon which we reported under date of -----, 19-- We have not examined any financial statements of the company and its subsidiaries for the 6-month periods ended -----, 19-- and 19-- attached to the accompanying Form PC-51 prepared by the company for the 6 months ended -----, 19--:

1. Compared the amounts shown in the company's report on Form 10-Q (or, alternatively, unaudited interim reports) for the 6-month periods ending -----, 19-- and 19-- with the related amounts shown in such reconciliations for the 6-month periods ending -----, 19-- and 19--.

2. Compared the amounts presented in the reconciliations for "noncovered" activities with (describe source of data, such as consolidating workpapers, special analyses, etc.) prepared by the company for the 6-month periods ended -----, 19-- and 19--.

3. Compared the types of "noncovered" activities in the reconciliations for the 6-month periods ended -----, 19-- and 19-- with the types of "noncovered" activities in similar reconciliations supporting the periods reported on the company's Form PC-50 dated -----, 19--.

4. Compared the classification and adjustment amounts pertaining to "covered" activities in the reconciliations for the 6-month periods ended -----, 19-- and 19-- with (describe source of data, such as consolidating workpapers, special analyses, etc.) prepared by the company for such periods.

5. Compared the types of such classifications and adjustments in the reconciliations for the 6-month periods ended -----, 19-- and 19-- with the types of such classifications and adjustments in similar reconciliations supporting the periods reported on the company's Form PC-50 dated -----, 19--.

6. Compared the amounts in lines 5 through 13 of Form PC-51 for the 6-month periods ended -----, 19-- and 19-- with the related amounts shown in such reconciliations for the 6-month period ended -----, 19-- and 19--.

7. Checked the arithmetical accuracy of the totals and subtotals appearing on the reconciliations for the 6-month periods ended -----, 19-- and 19-- and on lines 5 through 13 of Form PC-51 for the 6-month periods ended -----, 19-- and 19--.

8. Made inquiries of officers of the company as to whether the information set forth in the reconciliations for the 6-month periods ended -----, 19-- and 19-- complies in all material respects with the requirements of the general instructions of Form PC-51 as they related to lines 5 through 13.

The foregoing procedures do not constitute an examination of the reconciliations and Form PC-51 in accordance with generally accepted auditing standards and we do not express an opinion thereon. It should be understood that we make no representations as to questions of legal interpretation or as to the sufficiency for the Price Commission's purposes of the procedures enumerated in the preceding paragraph; also, such procedures would not necessarily reveal misstatements of the amounts shown in Form PC-51, lines 5 through 13, nor would such procedures necessarily disclose material facts which may have been omitted.

Nothing came to our attention as a result of the foregoing procedures, however, that caused us to believe that the amounts shown on lines 5 through 13 for the 6-month periods ended -----, 19-- and 19-- of the attached Form PC-51 were not compiled in all material respects by use of procedures and accounting principles substantially consistent with those followed by the company in compiling the amounts shown on lines 5 through 13 of the company's Form PC-50 dated -----, 19-- attached hereto (except as follows): (List the exceptions, if any, including their effect.)

This letter is solely for the company's transmittal to the Price Commission and is not to be used, circulated, quoted, or otherwise referred to outside of the company and the Price Commission. It is requested that this letter and the information submitted herewith be treated as confidential in accordance with Part 311 of the regulations of the Price Commission.

Independent Public Accountant

(Signature)

[FR Doc.72-11370 Filed 7-20-72; 8:54 am]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Releases Nos. 33-5261, 34-9648, 35-17617, 40-7236, AS-125]

PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, AND INVESTMENT COMPANY ACT OF 1940

Regulation S-X

Proposals to amend Articles 1 (17 CFR 210.1-01—210.1-02), 2 (17 CFR 210.2-01—210.2-05), 3 (17 CFR 210.3-01—210.3-20), 4 (17 CFR 210.4-01—210.4-14), 5 (17 CFR 210.5-01—210.5-04), 9 (17 CFR 210.9-01—210.9-05), 11 (17 CFR 210.11-01—210.11-02), and Rules 12-01 (17 CFR 210.12-01) to 16 (17 CFR 210.12-16) (exclusive of 12-06A (17 CFR 210.12-06A)), and to omit Rules 12-17 (17 CFR 210.12-17) and 12-32 (17 CFR 210.12-32) of Regulation S-X (17 CFR Part 210) were issued for public comment on August 20, 1971, in Securities Act Release No. 5177 (36 F.R. 16196 (1971)) (Securities Exchange Act Release No. 9264, Public Utility Holding Company Act Release No. 17215 and Investment Company Act Release No. 6645).

The letters of comment which were received have been given careful consideration in determining the definitive amendments of the above articles and rules. Amendments to Article 9 and Rule 12-32 have been deferred temporarily. Rule 12-17 has been retained for use in other articles of the regulation not affected by these amendments. Many changes of an editorial or clarifying nature have been made. Parts of the index of the regulation and certain rules in Articles 7 (17 CFR 210.7-01—210.7-06) and 7A (17 CFR 210.7a-01—210.7a-06) have been revised to reflect changes in rule numbers and caption headings. Other more substantive changes have been made in rules discussed below. The Commission also plans to issue in the near future a proposal to revise the instructions to the financial statements and summaries of operations in various filing forms to reflect the changes in terminology and caption headings adopted in Regulation S-X and to clarify and modify the instructions in some respects.

Rule 1-01—Application of Regulation S-X. Additional cross-referencing to pertinent Accounting Series Releases (17 CFR Part 211) has been made at various points in the revised articles and rules as an aid to utilization of the releases as part of Regulation S-X. A study of the releases is being made to provide a codification and to determine whether certain of the releases should be rescinded.

Rule 1-02—Significant subsidiary. A change has been made in the tests in this

definition to base them on the parent's and the parent's other subsidiaries' proportionate share of revenues and assets of a subsidiary rather than on the total of such revenues and assets.

Rule 2-02—Accountants' reports, paragraph (c), opinion to be expressed. More general wording was adopted in part (1) regarding the financial statements and accounting principles reflected therein in lieu of parts (1) and (2) of the proposal to avoid improper interpretations of what is required by the rule. Part (4) of the proposal was omitted because the requirement is no longer considered necessary.

Rule 2-06 (proposed)—Examination of policy reserves of life insurance companies by an actuary. Adoption of the proposed rule has been deferred pending completion of a study by the American Institute of Certified Public Accountants regarding accountants' responsibility in connection with such examinations.

Rule 3-08—Summary of accounting principles and practices. The original permissive basis for the presentation of a single statement regarding information on accounting principles and practices reflected in financial statements, as specified under other rules of Article 3, has been restored in view of the fact that the Accounting Principles Board of the American Institute of Certified Public Accountants has recently issued an opinion on "Disclosure of Accounting Policies."

Rule 3-09—Translation of items in foreign currencies (as proposed). Paragraph (a) of the proposal was combined with Rule 3-16(b) to eliminate some duplication and to place it more logically under the requirements for notes to financial statements, and paragraph (b) which dealt with bases of translation was omitted pending completion of studies by the American Institute of Certified Public Accountants on translation of foreign currencies and intercorporate investments.

Rule 3-16(g)—Pension and retirement plans. The original rule was revised to require disclosure specified in the Accounting Principles Board Opinion on "Accounting for the Cost of Pension Plans" in addition to the disclosure originally required, including the amount of unfunded past service cost.

Rule 3-16(i)—Commitments and contingent liabilities. Part (2) of this rule has been changed to restrict the requirements for disclosure to noncancelable leases which have not been capitalized.

Rule 3-16(o)—Income tax expense. This rule was adapted from instructions proposed for Rule 5-03-15 and placed with the requirements for notes to the financial statements to provide more flexibility for presentation of the data in the body of a financial statement or in a footnote. The instruction is intended to insure that the components of income tax expense, including taxes currently payable, are adequately disclosed.

Rule 3-16(p)—Warrants or rights outstanding. This rule conforms to the present practice of requiring the data, which is specified in the schedule under Rule 12-15, to be presented in the notes

to the financial statements for more informative disclosure.

Rule 4-02—Consolidated financial statements of the registrant and subsidiaries. Additional instructions were included in paragraphs (b) and (c) to clarify the rule, and the disclosure requirement specified under paragraph (b) (4) of the proposed rule was included with other disclosure requirements in paragraph (b) of Rule 4-04.

Rule 4-05—Reconciliation of investment of a person in subsidiaries not consolidated and 50 percent or less owned persons accounted for by the equity method, and equity of such person in their net assets. Part (a) of the proposed rule has been omitted since, with the advent of the equity method of accounting, the disclosure specified therein is not meaningful. The second paragraph of part (b) of the proposed rule has been omitted since substantially the same information will be obtained under a new caption in the income statement.

Rule 4-07—Consolidation of financial statements of a registrant and its subsidiaries engaged in diverse financial activities. The rule has been revised to clarify the conditions under which consolidated statements are permissible (paragraph (a)) and are not permissible (paragraph (b)).

Rule 5-02-20—Deferred research and development expenses, preoperating expenses and similar deferrals. An instruction was added to obtain disclosure in the notes to financial statements of significant data which would otherwise be disclosed under the schedule requirements adopted in Rule 12-08 for these types of expenses. (See comment under Rule 5-04, Schedule VII.)

Rule 5-02-39—Other stockholders' equity. The caption of this rule has been changed to provide a clearer distinction between retained earnings and other types of additional capital. The proposed requirement in paragraph (a) for disclosure regarding retained earnings capitalized has been omitted as unnecessary in light of requirements for analyses of the various equity accounts on a continuing basis. The change in terminology has also been reflected in Article 11.

Rule 5-03-17—Equity in earnings of unconsolidated subsidiaries and 50 percent or less owned persons. An additional instruction has been included to recognize that in some circumstances this item may be presented in a different position and in a different manner.

Rule 5-03-20—Cumulative effects of changes in accounting principles. This new caption was adopted to provide for the presentation of cumulative effects of changes in accounting principles in the income statement in the circumstances specified in Accounting Principles Board Opinion No. 20 of the American Institute of Certified Public Accountants.

Rule 5-04—Schedule VII. The instructions and the schedule prescribed in Rule 12-08 have been revised to require inclusion of data in support of balance sheet caption 20, Deferred research and development expenses, preoperating expenses and similar deferrals, comparable to the data presently required to be re-

ported in the schedule in support of balance sheet caption 16, Intangible assets. This addition to the schedule provides for more complete disclosure regarding the caption 20 items than was originally proposed under Rule 12-16 for research and development costs. This is considered desirable in light of the importance of expenditures on these types of activities to the current and future welfare of a company.

Rule 5-04—Schedules XVII and XVIII. The instructions have been changed to relate to new schedules adopted as Rules 12-42 and 12-43 to replace Rules 12-37 and 12-38 which had been adapted in Form S-11 (17 CFR 239.18) from another use for reporting by certain real estate companies on real estate held for investment and mortgage loans on real estate. The new schedules reflect the current structure of the real estate industry and will enable the companies to provide better disclosure regarding these important assets. The Instructions as to Financial Statements of Form S-11 will be amended in the near future to conform those instructions to these changes.

Rule 12-16—Supplementary income statement information. In order to simplify and reduce the overall requirements of the schedule, the requirement for disclosure of charges to other than income accounts for all items listed and the item Management and service contract fees have been omitted; the two elements of the item Rents and royalties have been listed separately; and a restricting definition for the item Advertising costs has been included.

(Securities Act of 1933, particularly secs. 6, 7, 8, 10, 19(a) thereof; the Securities Exchange Act of 1934, particularly secs. 12, 13, 15(d), 23(a) thereof; the Public Utility Holding Company Act of 1935, particularly secs. 5(b), 14, 20(a) thereof; and the Investment Company Act of 1940, particularly secs. 8, 30, 31(c), 33(a) thereof)

The text of the amendments is attached to this release.

These amendments shall be effective with respect to financial statements for periods ending on or after December 31, 1972, except that the inclusion of professional employees in the definition of "member" in Rule 2-01(b) is effective commencing January 1, 1973, in registration statements and reports filed with the Commission.

By the Commission, June 23, 1972.

[SEAL] RONALD F. HUNT,
Secretary.

ARTICLE 1—APPLICATION OF REGULATION S-X
(17 CFR PART 210)

Sec.
210.1-01 Application of Regulation S-X (17 CFR Part 210).
210.1-02 Definition of terms used in Regulation S-X (17 CFR Part 210).

ARTICLE 2—QUALIFICATIONS AND REPORTS OF ACCOUNTANTS

210.2-01 Qualifications of accountants.
210.2-02 Accountants' reports.
210.2-03 Examination of financial statements by foreign government auditors.

- Sec.
210.2-04 Examination of financial statements of persons other than the registrant.
210.2-05 Examination of financial statements by more than one accountant.

ARTICLE 3—RULES OF GENERAL APPLICATION

- 210.3-01 Form, order and terminology.
210.3-02 Items not material.
210.3-03 Inapplicable captions and omission of unrequired or inapplicable financial statements.
210.3-04 Omission of substantially identical notes.
210.3-05 Omission of names of certain subsidiaries.
210.3-06 Additional information.
210.3-07 Changes in accounting principles and practices and retroactive adjustments of accounts.
210.3-08 Summary of accounting principles and practices.
210.3-09 Valuation and qualifying accounts.
210.3-10 Basis of determining amounts—book value.
210.3-11 Current assets.
210.3-12 Current liabilities.
210.3-13 Reacquired evidences of indebtedness.
210.3-14 Reacquired shares.
210.3-15 Discount on capital shares.
210.3-16 General notes to financial statements.

ARTICLE 4—CONSOLIDATED AND COMBINED FINANCIAL STATEMENTS

- 210.4-01 Application of Article 4 (§§ 210.4-01 to 210.4-09).
210.4-02 Consolidated financial statements of the registrant and its subsidiaries.
210.4-03 Group financial statements of subsidiaries not consolidated and 50 percent or less owned persons.
210.4-04 Statement as to principles of consolidation or combination followed.
210.4-05 Reconciliation of investment of a person in subsidiaries and 50 percent or less owned persons accounted for by the equity method, and equity of such person in their net assets.
210.4-06 Intercompany items and transactions.
210.4-07 Consolidation of financial statements of a registrant and its subsidiaries engaged in diverse financial activities.
210.4-08 Special requirements as to public utility holding companies.
210.4-09 Special requirements as to commercial, industrial and mining companies in the promotional, exploratory or development stage subject to Article 5A.

ARTICLE 5—COMMERCIAL AND INDUSTRIAL COMPANIES

- 210.5-01 Application of Article 5 (§§ 210.5-01 to 210.5-04).
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ARTICLE 1—APPLICATION OF REGULATION S-X (17 CFR PART 210)

§ 210.1-01 Application of Regulation S-X (17 CFR PART 210).

(a) This part (together with the Accounting Series Releases [Part 211 of this chapter]) states the requirements applicable to the form and content of all financial statements required to be filed as a part of—

(1) Registration statements under the Securities Act of 1933 (Part 239 of this chapter), except as otherwise specifically provided in the forms which are to be used for registration under this Act;

(2) Registration statements under section 12 (Subpart C of Part 249 of this chapter), annual or other reports under sections 13 and 15(d) (Subparts D and E of Part 249 of this chapter), and proxy and information statements under section 14 of the Securities Exchange Act of 1934, except as otherwise specifically provided in the forms which are to be used for registration and reporting under these sections of this Act;

(3) Registration statements and annual reports filed under the Public Utility Holding Company Act of 1935 (Part 259 of this chapter) by public utility holding companies registered under such Act; and

(4) Registration statements and annual reports under the Investment Company Act of 1940 (Part 274 of this chapter).

(b) The term "financial statements" as used in this part shall be deemed to include all notes to the statements and all related schedules.

§ 210.1-02 Definitions of terms used in Regulation S-X (17 CFR PART 210).

Unless the context otherwise requires, terms defined in the general rules and regulations or in the instructions to the applicable form, when used in Regulation S-X (this Part 210), shall have the respective meanings given in such instructions or rules. In addition, the following terms shall have the meanings indicated in this section unless the context otherwise requires.

(a) *Accountant's report.* The term "accountant's report," when used in regard to financial statements, means a document in which an independent public or certified public accountant indicates the scope of the audit (or examination) which he has made and sets forth his opinion regarding the financial statements taken as a whole, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor shall be stated.

(b) *Affiliate.* An "affiliate" of, or a person "affiliated" with, a specific person is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(c) *Amount.* The term "amount," when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

(d) *Audit (or examination).* The term "audit" (or "examination"), when used in regard to financial statements, means an examination of the statements by an accountant in accordance with generally accepted auditing standards for the purpose of expressing an opinion thereon.

(e) *Bank holding company.* The term "bank holding company" means a person which is engaged, either directly or

indirectly, primarily in the business of owning securities of one or more banks for the purpose, and with the effect, of exercising control.

(f) *Certified*. The term "certified," when used in regard to financial statements, means examined and reported upon with an opinion expressed by an independent public or certified public accountant.

(g) *Control*. The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

(h) *Equity security*. The term "equity security" means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right.

(i) *Fifty-percent-owned person*. The term "50-percent-owned person," in relation to a specified person, means a person approximately 50 percent of whose outstanding voting shares is owned by the specified person either directly, or indirectly through one or more intermediaries.

(j) *Fiscal year*. The term "fiscal year" means the annual accounting period or, if no closing date has been adopted, the calendar year ending on December 31.

(k) *Insurance holding company*. The term "insurance holding company" means a person which is engaged, either directly or indirectly, primarily in the business of owning securities of one or more insurance companies for the purpose, and with the effect, of exercising control.

(l) *Majority-owned subsidiary*. The term "majority-owned subsidiary" means a subsidiary more than 50 percent of whose outstanding voting shares is owned by its parent and/or the parent's other majority-owned subsidiaries.

(m) *Material*. The term "material," when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters about which an average prudent investor ought reasonably to be informed.

(n) *Parent*. A "parent" of a specified person is an affiliate controlling such person directly, or indirectly through one or more intermediaries.

(o) *Person*. The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization.

(p) *Principal holder of equity securities*. The term "principal holder of equity securities," used in respect of a registrant or other person named in a particular statement or report, means a holder of record or a known beneficial owner of more than 10 percent of any class of equity securities of the registrant or other person, respectively, as of the date of the related balance sheet filed.

(q) *Promoter*. The term "promoter" includes—

(1) Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer;

(2) Any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10 percent or more of any class of securities of the issue or 10 percent or more of the proceeds from the sale of any class of securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this paragraph if such person does not otherwise take part in founding and organizing the enterprise.

(r) *Registrant*. The term "registrant" means the issuer of the securities for which an application, a registration statement, or a report is filed.

(s) *Share*. The term "share" means a share of stock in a corporation or unit of interest in an unincorporated person.

(t) *Significant subsidiary*. The term "significant subsidiary" means (1) a subsidiary or (2) a subsidiary and its subsidiaries, which meets either of the conditions described below based on (i) the most recent annual financial statements, including consolidated financial statements, of such subsidiary which would be required to be filed if such subsidiary were a registrant and (ii) the most recent annual consolidated financial statements of the registrant being filed:

(a) The parent's and the parent's other subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the subsidiary, or their investments in and advances to the subsidiary exceed 10 percent of the total assets of the parent and consolidated subsidiaries.

(b) The parent's and the parent's other subsidiaries' proportionate share of the total sales and revenues (after intercompany eliminations) of the subsidiary exceed 10 percent of the total sales and revenues of the parent and consolidated subsidiaries.

(u) *Subsidiary*. A "subsidiary" of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries.

(v) *Totally held subsidiary*. The term "totally held subsidiary" means a subsidiary (1) substantially all of whose outstanding equity securities are owned by its parent and/or the parent's other totally held subsidiaries, and (2) which is not indebted to any person other than its parent and/or the parent's other totally held subsidiaries, in an amount which is material in relation to the particular subsidiary, excepting indebtedness incurred in the ordinary course of business which is not overdue and which matures within 1 year from the date of its creation, whether evidenced by secu-

rities or not. Indebtedness of a subsidiary which is secured by its parent by guarantee, pledge, assignment, or otherwise is to be excluded for purposes of subparagraph (2) of this paragraph.

(w) *Voting shares*. The term "voting shares" means the sum of all rights, other than as affected by events of default, to vote for election of directors and/or the sum of all interests in an unincorporated person.

(x) *Wholly owned subsidiary*. The term "wholly owned subsidiary" means a subsidiary substantially all of whose outstanding voting shares are owned by its parent and/or the parent's other wholly owned subsidiaries.

ARTICLE 2—QUALIFICATIONS AND REPORTS OF ACCOUNTANTS

§ 210.2-01 Qualifications of accountants.

(a) The Commission will not recognize any person as a certified public accountant who is not duly registered and in good standing as such under the laws of the place of his residence or principal office. The Commission will not recognize any person as a public accountant who is not in good standing and entitled to practice as such under the laws of the place of his residence or principal office.

(b) The Commission will not recognize any certified public accountant or public accountant as independent who is not in fact independent. For example, an accountant will be considered not independent with respect to any person or any of its parents, its subsidiaries, or other affiliates (1) in which, during the period of his professional engagement to examine the financial statements being reported on or at the date of his report, he or his firm or a member thereof had, or was committed to acquire, any direct financial interest or any material indirect financial interest; (2) with which, during the period of his professional engagement to examine the financial statements being reported on, at the date of his report or during the period covered by the financial statements, he or his firm or a member thereof was connected as a promoter, underwriter, voting trustee, director, officer, or employee, except that a firm will not be deemed not independent in regard to a particular person if a former officer or employee of such person is employed by the firm and such individual has completely dissociated himself from the person and its affiliates and does not participate in auditing financial statements of the person or its affiliates covering any period of his employment by the person. For the purposes of this § 210.2-01 the term "member" means all partners in the firm and all professional employees participating in the audit or located in an office of the firm participating in a significant portion of the audit.

(c) In determining whether an accountant may in fact be not independent with respect to a particular person, the Commission will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant and

that person or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of reports with the Commission.

§ 210.2-02 Accountants' reports.

(a) *Technical requirements.* The accountant's report (1) shall be dated; (2) shall be signed manually; (3) shall indicate the city and State where issued; and (4) shall identify without detailed enumeration the financial statements covered by the report.

(b) *Representations as to the audit.* The accountant's report (1) shall state whether the audit was made in accordance with generally accepted auditing standards; and (2) shall designate any auditing procedures deemed necessary by the accountant under the circumstances of the particular case, which have been omitted, and the reasons for their omission. Nothing in this rule shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit made for the purpose of expressing the opinions required by paragraph (c) of this section.

(c) *Opinion to be expressed.* The accountant's report shall state clearly: (1) The opinion of the accountant in respect of the financial statements covered by the report and the accounting principles and practices reflected therein; and (2) the opinion of the accountant as to the consistency of the application of the accounting principles, or as to any changes in such principles which have a material effect on the financial statements as required to be set forth in § 210.3-07(a).

(d) *Exceptions.* Any matters to which the accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated, and, to the extent practicable, the effect of each such exception on the related financial statements given. (See Release No. AS-4.)

§ 210.2-03 Examination of financial statements by foreign government auditors.

Notwithstanding any requirements as to examination by independent accountants, the financial statements of any foreign governmental agency may be examined by the regular and customary auditing staff of the respective government if public financial statements of such governmental agency are customarily examined by such auditing staff.

§ 210.2-04 Examination of financial statements of persons other than the registrant.

If a registrant is required to file financial statements of any other person, such statements need not be examined if examination of such statements would not be required if such person were itself a registrant.

§ 210.2-05 Examination of financial statements by more than one accountant.

If, with respect to the examination of the financial statements of any person,

the principal accountant relies on an audit made by another accountant of certain of the accounts of such person or its subsidiaries, the report of such other accountant shall be filed (and the provisions of §§ 210.2-01 and 210.2-02 shall be applicable thereto): *However*, The report of such other accountant need not be filed (a) if no reference is made directly or indirectly to such other accountant's audit in the principal accountant's report, or (b) if, having referred to such other accountant's audit, the principal accountant states in his report that he assumes responsibility for such other accountant's audit in the same manner as if it had been made by him.

ARTICLE 3—RULES OF GENERAL APPLICATION

§ 210.3-01 Form, order, and terminology.

(a) Financial statements may be filed in such form and order, and may use such generally accepted terminology, as will best indicate their significance and character in the light of the provisions applicable thereto.

(b) All money amounts required to be shown in financial statements may be expressed in whole dollars, in thousands of dollars or in hundred thousands of dollars, as appropriate: *Provided*, That, when stated in other than whole dollars, an indication to that effect is inserted immediately beneath the caption of the statement or schedule, or at the top of the money columns, or at an appropriate point in narrative material. The individual amounts shown need not be adjusted to the nearest dollar, or thousand or hundred thousands if in a note it is stated that the failure of the items to add to the totals shown is due to the dropping of amounts less than \$1, \$1,000, or \$100,000, as appropriate.

(c) Negative amounts (red figures) shall be shown in brackets or parentheses and so described in the related caption, columnar heading or a note to the statement or schedule, as appropriate.

§ 210.3-02 Items not material.

If the amount which would otherwise be required to be shown with respect to any item is not material, it need not be separately set forth (but see Release No. AS-41).

§ 210.3-03 Inapplicable captions and omission of unrequired or inapplicable financial statements.

(a) No caption need be shown in any financial statement as to which the items and conditions are not present.

(b) Financial statements not required or inapplicable because the required matter is not present need not be filed.

(c) Financial statements omitted and the reasons for their omission shall be indicated in the list of financial statements required by the applicable form.

§ 210.3-04 Omission of substantially identical notes.

If a note covering substantially the same subject matter is required with re-

spect to two or more financial statements relating to the same or affiliated persons, for which separate sets of notes are presented, the required information may be shown in a note to only one of such statements: *Provided*, That a clear and specific reference thereto is made in each of the other statements with respect to which the note is required.

§ 210.3-05 Omission of names of certain subsidiaries.

Notwithstanding the requirements as to particular statements, subsidiaries, the names of which are permitted to be omitted from the list of affiliates required by the applicable form, need not be named in any financial statement. Reasonable grouping of such subsidiaries may be made, with an explanatory group caption which shall state the number of subsidiaries included in the group.

§ 210.3-06 Additional information.

The information required with respect to any statement shall be furnished as a minimum requirement to which shall be added such further material information as is necessary to make the required statements, in the light of the circumstances under which they are made, not misleading. This rule shall be applicable to all statements required to be filed, including copies of statements required to be filed in the first instance with other governmental agencies.

§ 210.3-07 Changes in accounting principles and practices and retroactive adjustments of accounts.

(a) Any change in an accounting principle or practice, or in the method of applying any accounting principle or practice, made during any period for which financial statements are being filed which materially affects comparability of such financial statements with those of prior periods, and the effect thereof upon the net income of the period in which such change is made and, if practicable, of the prior periods for which financial statements are being filed, shall be disclosed in an appropriate manner.

(b) Any material retroactive adjustment made in income statements during any period for which financial statements are being filed, and the effect thereof upon net income of prior periods shall be disclosed in a note to the appropriate financial statement: *Provided, however*, That such disclosures need not be made (1) if they have been made in filings with the Commission in prior years or (2) the financial statements which are being retroactively adjusted have not previously been filed with the Commission or otherwise made public.

§ 210.3-08 Summary of accounting principles and practices.

Information required in notes as to accounting principles and practices reflected in the financial statements may be presented in the form of a single statement. In such case, specific references shall be made in the appropriate financial statements to the applicable portion of such single statement.

§ 210.3-09 Valuation and qualifying accounts.

Valuation and qualifying accounts shall be shown separately in the financial statements as deductions from the specific assets to which they apply.

§ 210.3-10 Basis of determining amounts—book value.

If an instruction requires a statement as to "the basis of determining the amount," the basis shall be stated specifically. The term "book value" will not be sufficiently explanatory unless, in a particular instruction, it is stated to be acceptable with respect to a particular item.

§ 210.3-11 Current assets.

Assets and other resources classed with cash and its equivalent as current assets shall be reasonably expected to be realized in cash or sold or consumed within one year. However, if the normal operating cycle of the company is longer than 1 year, generally recognized trade practices may be followed with respect to the inclusion of items such as installment receivables or inventories long in process: *Provided*, An appropriate explanation of the circumstances is made and, if practicable, an estimate is given of the amount not realizable within 1 year. The captions specified under this § 210.3-11 and § 210.3-12 are not required for persons which do not normally distinguish current assets and liabilities from noncurrent.

§ 210.3-12 Current liabilities.

Obligations which are payable within 1 year or whose liquidation is reasonably expected to require the use of existing current assets (see § 210.3-11) or the creation of other current liabilities shall be classed as current liabilities. However, if the normal operating cycle of the company is longer than 1 year, generally recognized trade practices may be followed with respect to the exclusion of items such as customers' deposits and deferred income, provided an appropriate explanation of the circumstances is made. (See also Release No. AS-102.)

§ 210.3-13 Reacquired evidences of indebtedness.

Reacquired evidences of indebtedness shall be deducted from the appropriate liability caption. However, reacquired evidences of indebtedness held for pension and other special funds not related to the particular issues may be shown as assets of such funds: *Provided*, That there be stated parenthetically the amount of such evidences of indebtedness, the cost thereof, and the amount at which stated.

§ 210.3-14 Reacquired shares.

Reacquired shares not retired shall be shown separately as a deduction from capital shares, or from the total of capital shares and other stockholders' equity, or from other stockholders' equity, at either par or stated value, or cost, as circumstances require.

§ 210.3-15 Discount on capital shares.

Discount on capital shares, or any unamortized balance thereof, shall be shown separately as a deduction from capital shares or from additional capital as circumstances require.

§ 210.3-16 General notes to financial statements. (See Release No. AS-4.)

If present in regard to the person for which the financial statements are filed, the following shall be set forth on the face of the appropriate statement or in notes appropriately captioned and referred to in such statement. The information shall be provided for each statement required to be filed, except that the information required by paragraphs (c), (e), (f), (g) (3), (h), (i), (k), and (p) of this section shall be provided as of the most recent audited balance sheet and any subsequent unaudited balance sheet being filed. When specific statements are presented separately the pertinent notes shall be attached unless cross-referencing is appropriate.

(a) *Principles of consolidation or combination.* With regard to consolidated or combined financial statements, refer to §§ 210.4-01 to 210.4-09 for requirements for supplemental information in notes to the financial statements.

(b) *Principles of translation of items in foreign currencies.* When items in foreign currencies are included in the financial statements being presented, there shall be stated (1) a brief description of the principles followed in translating the foreign currencies into U.S. currency and (2) the amount and disposition of the unrealized gain or loss.

(c) *Assets subject to lien.* Assets mortgaged, pledged, or otherwise subject to lien, and the approximate amounts thereof, shall be designated and the obligations collateralized briefly identified.

(d) *Intercompany profits and losses.* The amount, and the effect upon any balance sheet item, of profits or losses resulting from transactions with affiliated companies and not eliminated shall be stated. If impracticable of accurate determination without unreasonable effort or expense, give an estimate or explain.

(e) *Defaults.* The facts and amounts concerning any default in principal, interest, sinking fund, or redemption provisions with respect to any issue of securities or credit agreements, or any breach of covenant of a related indenture or agreement, which default or breach existed at the date of the most recent balance sheet being filed and which has not been subsequently cured, shall be stated. Notation of such default or breach of covenant shall be made in the financial statements and the entire amount of obligations to which the default or breach relates shall be classified as a current liability if said default or breach accelerates the maturity of the obligations and makes it current under the terms of the related indenture or agreement. Classification as a current obligation is not required if the lender has

waived the accelerated due date or otherwise agreed to a due date more than 1 year from the balance sheet date. If a default or breach exists, but acceleration of the obligation has been waived for a stated period of time beyond the date of the most recent balance sheet being filed, state the amount of the obligation and the period of the waiver.

(f) *Preferred shares.* (1) If callable, the date or dates and the amount per share at which such shares are callable shall be stated. If convertible, the terms of conversion shall be stated briefly.

(2) Arrears in cumulative dividends per share and in total for each class of shares shall be stated.

(3) Aggregate preferences on involuntary liquidation, if other than the par or stated value, shall be shown parenthetically in the equity section of the balance sheet. When the excess involved is material there shall be shown: (i) The difference between the aggregate preference on involuntary liquidation and the aggregate par or stated value; (ii) a statement that this difference, plus any arrears in dividends, exceeds the sum of the par or stated value of the junior capital shares and other stockholders' equity applicable to junior shares, if such is the case; and (iii) a statement as to the existence of any restrictions upon retained earnings growing out of the fact that upon involuntary liquidation the preference of the preferred shares exceeds its par or stated value.

(g) *Pension and retirement plans.* (1) A brief description of the essential provisions of any employee pension or retirement plan and of the accounting and funding policies related thereto shall be given.

(2) The estimated cost of the plan for each period for which an income statement is presented shall be stated.

(3) The excess, if any, of the actuarially computed value of vested benefits over the total of the pension fund and any balance sheet pension accruals, less any pension prepayments or deferred charges, shall be given as of the most recent practicable date.

(4) If a plan has not been fully funded or otherwise provided for, the estimated amount that would be necessary to fund or otherwise provide for the past service cost of the plan shall be disclosed as of the date most recently determined.

(5) A statement shall be given of the nature and effect of significant matters affecting comparability of pension costs for any periods for which income statements are presented.

(h) *Restrictions which limit the availability of retained earnings for dividend purposes* (see Release No. AS-35). Describe the most restrictive of any such restrictions, other than as reported in paragraph (f) of this section, indicating briefly its source, its pertinent provisions, and, where appropriate and determinable, the amount of retained earnings (1) so restricted or (2) free of such restrictions.

(i) *Commitments and contingent liabilities.* (1) If material in amount, there shall be disclosed the pertinent facts

relative to firm commitments for the acquisition of permanent or long-term investments and property, plant, and equipment and for the purchase, repurchase, construction, or rental of assets under material leases.

(2) Where the annual rentals or obligations under noncancelable leases which have not been recorded as assets and liabilities are in excess of 1 percent of total sales and revenues of the most recent fiscal year, there shall be shown: (i) The minimum annual rentals for the current and each of the 5 succeeding years; (ii) the nature and effect of any provisions that would cause the annual rentals to vary from the minimum rentals; and (iii) a description of the types of property leased, important obligations assumed or guarantees made, and any other significant provisions of such leases.

(3) A brief statement as to contingent liabilities not reflected in the balance sheet shall be made. In the case of guarantees of securities of other issuers, periodic reports shall include a reference to Schedule XI and reports or prospectuses which do not include that schedule shall briefly describe such guarantees; where only consolidated financial statements are presented, such information shall relate solely to guarantees of securities of companies not included in the consolidation.

(j) *Bonus, profit sharing, and other similar plans.* Describe the essential provisions of any such plans in which only directors, officers or key employees may participate, and state, for each of the fiscal periods for which income statements are required to be filed, the aggregate amount provided for all plans by charges to expense.

(k) *Significant changes in bonds, mortgages, and similar debt.* Any significant changes in the authorized or issued amounts of bonds, mortgages, and similar debt since the date of the latest balance sheet being filed for a particular person or group shall be stated.

(l) *Bases of revenues recognition.* If sales are made on a deferred basis, such as installment sales or sales of equipment long in process of manufacture, or if sales or revenues are otherwise subject to alternative methods of revenue recognition, the basis of taking profits into income shall be stated.

(m) *Depreciation, depletion, obsolescence, and amortization.* State the policy followed with respect to—

(1) The provision for depreciation, depletion, obsolescence, and amortization of physical properties and capitalized leases, including the methods and, if practicable, the rates used in computing the annual amounts;

(2) The provision for depreciation and amortization of intangible assets or the lack of such provision, including the methods and, if practicable, the rates used in computing the annual amounts;

(3) The accounting treatment for maintenance, repairs, renewals, and betterments; and

(4) The adjustment of accumulated depreciation, depletion, obsolescence, and amortization at the time the prop-

erties are retired or otherwise disposed of, including the disposition of any gain or loss on sale of such properties.

(n) *Capital stock optioned, sold, or offered for sale to directors, officers, and key employees.* (1) A brief description of the terms of each option arrangement shall be given, including (i) the title and amount of securities subject to option; (ii) the year or years during which the options were granted; and (iii) the year or years during which the optionees became, or will become, entitled to exercise the options.

(2) *State:* (i) The number of shares under option at the balance sheet date, and the option price and the fair value thereof, per share and in total, at the dates the options were granted; (ii) the number of shares with respect to which options became exercisable during each period presented, and the option price and the fair value thereof, per share and in total, at the dates the options became exercisable; (iii) the number of shares with respect to which options were exercised during each period, and the option price and the fair value thereof, per share and in total, at the dates the options were exercised; and (iv) the number of unoptioned shares available, at the beginning and at the close of the latest period presented, for the granting of options under an option plan.

(3) A brief description of the terms of each other arrangement covering shares sold or offered for sale to only directors, officers, and key employees shall be given, including the number of shares, and the offered price and the fair value thereof per share and in total, at the dates of sale or offer to sell, as appropriate.

(4) The required information should be summarized and tabulated, as appropriate, with respect to all option plans as a group and other plans for shares sold or offered for sale as a group.

(5) State the basis of accounting for such arrangements and the amount of charges, if any, reflected in income with respect thereto.

(o) *Income tax expense.* Disclosure shall be made, in the income statement or a note thereto, of the components of income tax expense, including: (1) Taxes currently payable; (2) the net tax effects, as applicable, of (i) timing differences and (ii) operating losses; and (3) the net deferred investment tax credits. Amounts applicable to Federal income taxes and to other income taxes shall be stated separately for each component, unless the amounts applicable to other income taxes do not exceed 5 percent of the total for the component and a statement to that effect is made.

(p) *Warrants or rights outstanding.* Information with respect to warrants or rights outstanding at the date of the related balance sheet shall be set forth as follows:

(1) Title of issue of securities called for by warrants or rights.

(2) Aggregate amount of securities called for by warrants or rights outstanding.

(3) Date from which warrants or rights are exercisable and expiration date.

(4) Price at which warrant or right is exercisable.

ARTICLE 4—CONSOLIDATED AND COMBINED FINANCIAL STATEMENTS

§ 210.4-01 Application of §§ 210.4-01 to 210.4-09.

Sections 210.4-01 to 210.4-09 shall govern the presentation of consolidated and combined financial statements.

§ 210.4-02 Consolidated financial statements of the registrant and its subsidiaries.

(a) The registrant shall follow in the consolidated financial statements principles of inclusion or exclusion which will clearly exhibit the financial position and results of operations of the registrant and its subsidiaries: *Provided, however,* That the registrant shall not consolidate:

(1) Any subsidiary which is not majority owned; or

(2) Any subsidiary whose financial statements are as of a date or for periods different from those of the registrant, unless all the following conditions are met: (i) Such difference is not more than 93 days; (ii) the closing date of the subsidiary is expressly indicated; and (iii) the necessity for the use of different closing dates is briefly explained.

(b) Notwithstanding the 93-day requirement specified in paragraph (a) (2) (i) of this section, in connection with the retroactive combination of the financial statements of entities following a "pooling of interests," the financial statements of the constituents may be combined even if their respective fiscal periods do not end within 93 days, except that the financial statements for the latest fiscal year shall be recast to dates which do not differ by more than 93 days, if practicable. Disclosure shall be made of the periods combined and of the sales or revenues, net income before extraordinary items and net income of any interim periods excluded from or included more than once in results of operations as a result of such recasting.

(c) The 93-day requirement specified in paragraph (a) (2) (i) of this section is not applicable to the recognition of earnings or losses of 50 percent or less owned persons, the investments in which are accounted for by the equity method of accounting.

(d) Due consideration shall be given to the propriety of consolidating with domestic corporations foreign subsidiaries which are operated under political, economic or currency restrictions. If consolidated, disclosure should be made as to the effect, insofar as this can reasonably be determined, of foreign exchange restrictions upon the consolidated financial position and operating results of the registrant and its subsidiaries.

§ 210.4-03 Group financial statements of subsidiaries not consolidated and 50 percent or less owned persons.

There may be filed financial statements in which majority-owned subsidiaries not consolidated with the parent are consolidated or combined in one or more groups, and 50 percent or less owned

persons the investments in which are accounted for by the equity method are consolidated or combined in one or more groups, pursuant to principles of inclusion or exclusion which will clearly exhibit the financial position and results of operations of the group or groups.

§ 210.4-04 Statement as to principles of consolidation or combination followed.

(a) A brief description of the principles followed in consolidating or combining the separate financial statements, including the principles followed in determining the inclusion or exclusion of (1) subsidiaries in consolidated or combined financial statements and (2) companies in consolidated or combined financial statements, shall be stated in the notes to the respective financial statements.

(b) As to each consolidated financial statement and as to each combined financial statement, if there has been a change in the persons included or excluded in the corresponding statement for the preceding fiscal period filed with the Commission which has a material effect on the financial statements, the persons included and the persons excluded shall be disclosed. If there have been any changes in the respective fiscal periods of the persons included made during the periods of the report which have a material effect on the financial statements, indicate clearly such changes and the manner of treatment.

§ 210.4-05 Reconciliation of investment of a person in subsidiaries not consolidated and 50 percent or less owned persons accounted for by the equity method, and equity of such person in their net assets.

A statement shall be made in a note to the latest balance sheet of the amount and the accounting treatment of any difference between (a) the investment of a person and its consolidated subsidiaries, as shown in the consolidated balance sheet, in the unconsolidated subsidiaries and 50 percent or less owned persons accounted for by the equity method and (b) their equity in the net assets of such unconsolidated subsidiaries and 50 percent or less owned persons as shown in their financial statements.

§ 210.4-06 Intercompany items and transactions.

In general, there shall be eliminated intercompany items and transactions between persons included in the (a) consolidated financial statements being filed and, as appropriate, (b) unrealized intercompany profits and losses on transactions between persons for which financial statements are being filed and persons the investment in which is presented in such statements by the equity method. If such eliminations are not made, a statement of the reasons and the methods of treatment shall be made.

§ 210.4-07 Consolidation of financial statements of a registrant and its subsidiaries engaged in diverse financial activities.

(a) If the registrant and its subsidiaries are engaged in one or more types of financial activities, e.g., banking, insurance, finance, and savings and loan subsidiaries, consolidated financial statements may be filed unless deemed inappropriate; provided that, when more than one type of financial activity is involved, separate audited financial statements for each significant financial subsidiary or each significant group of financial subsidiaries shall be presented. Banks and other direct or indirect subsidiaries of bank holding companies engaged in bank related finance activities are considered to be one type of financial activity for the purpose of this rule.

(b) If the registrant and its subsidiaries are engaged in (1) manufacturing, merchandising or other nonfinancial activities as well as in (2) financial activities as described in paragraph (a) of this section, the subsidiaries related to whichever of subparagraph (1) or (2) of this paragraph is less significant shall not be consolidated with the operations of the major group; however, the group of lesser significance may be included in the consolidated financial statements if its activities are principally for the benefit of the operations of the major group. In interpreting the significance of the groups above, the registrant should consider factors in addition to those in the definition of significant subsidiary including the primary business activities of the registrant, trends, and other pertinent matters.

§ 210.4-08 Special requirements as to public utility holding companies.

There shall be shown in the consolidated balance sheet of a public utility holding company the difference between the amount at which the parent's investment is carried and the underlying book equity of subsidiaries as at the respective dates of acquisition.

§ 210.4-09 Special requirements as to commercial, industrial and mining companies in the promotional, exploratory or development stage subject to §§ 210.5a-01 to 210.5a-07.

The financial statements required by §§ 210.5a-01 to 210.5a-07 shall, insofar as practicable, be prepared to show the information for the registrant and each of its subsidiaries separately or on a consolidating basis in parallel columns.

ARTICLE 5—COMMERCIAL AND INDUSTRIAL COMPANIES

§ 210.5-01 Application of §§ 210.5-01 to 210.5-04.

(a) Sections 210.5-01 to 210.5-04 shall be applicable to financial statements filed for all persons except—

(1) Commercial, industrial, and mining companies in the promotional, exploratory, or development stage (see §§ 210.5a-01 to 210.5a-07).

(2) Management investment companies (see §§ 210.6-01 to 210.6-10).

(3) Unit investment trusts (see §§ 210.6-10a to 210.6-13).

(4) Face amount certificate investment companies (see §§ 210.6-20 to 210.6-24).

(5) Employee stock purchase, savings and similar plans (see §§ 210.6-30 to 210.6-34).

(6) Insurance companies other than title insurance companies (see §§ 210.7-01 to 210.7-06 and §§ 210.7a-01 to 210.7a-06).

(7) Committees issuing certificates of deposit (see §§ 210.8-01 to 210.8-03).

(8) Banks (see § 210.9-05).

(9) Brokers and dealers when filing Forms X-17A-5 and X-17A-10 [§ 249.617] (see §§ 240.17a-5 and 240.17a-10 under the Securities Exchange Act of 1934).

(b) Bank holding companies: Financial statements and schedules filed for bank holding companies shall be prepared in accordance with this article (§§ 210.5-01 to 210.5-04) except that §§ 210.9-01 to 210.9-04, inclusive, shall be applicable thereto.

§ 210.5-02 Balance sheets.

Except as otherwise permitted by the Commission, the balance sheets filed for persons to whom this article is applicable shall comply with the following provisions (see § 210.3-01(a) and Release No. AS-41).

ASSETS AND OTHER DEBITS

CURRENT ASSETS, WHEN APPROPRIATE (SEE § 210.3-11)

1. *Cash and cash items.* State separately: (a) Cash on hand and demand deposits; (b) funds subject to repayment on call or immediately after the date of the balance sheet required to be filed; (c) time deposits; and (d) other funds, the amounts of which are known to be subject to withdrawal or usage restrictions, e.g., as compensating balances or special purpose funds. The general terms and nature of such repayment provisions and withdrawal or usage restrictions shall be described in a note referred to herein. Funds subject to withdrawal or usage restrictions shall not be included under this caption unless they are reasonably expected to become available for current operations within 1 year.

2. *Marketable securities.* Include only securities having a ready market and which represent the investment of cash available for current operations; securities which are intended to be used for nonworking capital purposes shall be excluded. Securities of affiliates shall not be included here. State, parenthetically or otherwise, the basis of determining the amount shown in the balance sheet and state the alternate of the aggregate cost or the aggregate amount on the basis of market quotations at the balance sheet date. When the original cost of securities purchased on a yield basis has been properly adjusted to reflect amortization of premium or accumulation of discount since acquisition, the basis of determining their amount may be described "at cost."

3. *Accounts and notes receivable.* (a) State separately amounts receivable from: (1) Customers (trade); (2) parents and subsidiaries; (3) other affiliates and other persons the investments in which are accounted for by the

equity method; (4) underwriters, promoters, directors, officers, employees, and principal holders (other than affiliates) of equity securities of the person and its affiliates; and (5) others. Exclude from (4) amounts for purchases by such persons subject to usual trade terms, for ordinary travel and expense advances and for other such items arising in the ordinary course of business. With respect to (2) and (3), state separately in the registrant's balance sheet the amounts which in the related consolidated balance sheet are (i) eliminated and (ii) not eliminated.

(b) If receivables maturing after 1 year are included here under a longer current operating cycle (see § 210.3-11), state in a note to the financial statements the amount thereof and, if practicable, the amounts maturing in each year. Interest rates on major receivable items maturing after 1 year, or classes of receivables so maturing, shall be set forth, or an indication of the average interest rate, or the range of rates, on all receivables shall be given.

(c) Receivables from a parent, a subsidiary, an affiliate or other person designated under (a) (2) and (a) (3) above shall not be considered as current unless the net current asset position of such person justifies such treatment.

(d) If the aggregate amount of notes receivable exceeds 10 percent of the aggregate amount of receivables, the above information shall be set forth separately for accounts receivable and notes receivable.

4. *Allowances for doubtful accounts and notes receivable.* Accounts and notes receivable known to be uncollectible shall be excluded from the assets as well as from the allowance accounts.

5. *Unearned income.* Unearned discounts, finance charges and interest included in receivables shall be shown separately and deducted from the applicable receivable caption.

6. *Inventories.* (a) State separately here, or in a note referred to herein, if practicable, the major classes of inventory such as: (1) Finished goods; (2) work in process (see § 210.3-11); (3) raw materials; and (4) supplies.

(b) The basis of determining the amounts shall be stated. If a basis such as "cost," "market," or "cost or market whichever is lower" is given, there shall also be given, to the extent practicable, a general indication of the method of determining the "cost" (e.g., "average cost," "first-in, first-out," "last-in, first-out") and the method of determining "market" if other than replacement or current cost. If the LIFO method is used, the excess of replacement or current cost over stated LIFO value shall, if material, be stated parenthetically or in a note to the financial statements.

7. *Other current assets.* State separately any amounts in excess of 5 percent of total current assets. The remaining items may be shown in one amount.

8. *Prepaid expenses* (see caption 19 of § 210.5-02).

9. *Total current assets, when appropriate.*

INVESTMENTS

10. *Securities of affiliates and other persons.* Include under this caption amounts representing investments in affiliates and investments in other persons which are accounted for by the equity method, and state the basis of determining these amounts. State separately in the registrant's balance sheet the amounts which in the related consolidated balance sheet are (a) eliminated and (b) not eliminated.

11. *Indebtedness of affiliates and other persons—not current.* Include under this caption indebtedness of affiliates and indebtedness of other persons the investments in which are accounted for by the equity

method. State separately in the registrant's balance sheet the indebtedness which in the related consolidated balance sheet is (a) eliminated and (b) not eliminated.

12. *Other security investments.* State the basis of determining the amount shown in the balance sheet and state, parenthetically or otherwise, the alternate of the aggregate cost or the aggregate amount on the basis of market quotations at the balance sheet date.

13. *Other investments.* State separately, by class of investments, any items in excess of 5 percent of total assets.

PROPERTY

14. *Property, plant, and equipment.* (a) State separately here, or in a note referred to herein, if practicable, each major class, such as land, buildings, machinery, and equipment, leaseholds, or functional grouping such as revenue producing equipment or industry categories, and the basis of determining the amounts; i.e., cost, cost plus manufacturing profit, etc.

(b) Tangible and intangible utility plant of a public utility company shall be segregated so as to show separately the original cost, plant acquisition adjustments, and plant adjustments, as required by the system of accounts prescribed by the applicable regulatory authorities. This subparagraph shall not be applicable in respect of companies which are not otherwise required to make such a classification or have not completed the necessary original cost studies. If such classification is not otherwise required or if such original cost studies have not been completed, an appropriate explanation of the circumstances shall be set forth in a note which shall include a specific statement as to the status of the original cost studies and, to the extent practicable, the results indicated thereby.

15. *Accumulated depreciation, depletion, and amortization of property, plant, and equipment.*

INTANGIBLE ASSETS

16. *Intangible assets.* State separately each major class, such as goodwill, franchises, patents or trademarks, and the basis of determining their respective amounts.

17. *Accumulated depreciation and amortization of intangible assets.*

OTHER ASSETS AND DEFERRED CHARGES

18. *Other assets.* State separately: (a) Noncurrent receivables from persons specified in captions 3(a) (1) and (4); (b) each pension or other special fund; and (c) any other item not properly classed in one of the preceding asset captions which is in excess of 5 percent of total assets.

19. *Prepaid expenses and deferred charges.* State separately any material items. Items properly classed as current may, however, be included under caption 8.

20. *Deferred research and development expenses, preoperating expenses and similar deferrals.* State separately each major class and, in a note referred to herein, the policy for deferral and amortization. Where the amounts deferred or amortized are material, such amounts as shown by § 210.12-08 shall be stated in the note for each period reported on.

21. *Deferred organization expense.* State, in a note referred to herein, the policy for deferral and amortization.

22. *Deferred debt expense.* State, in a note referred to herein, the policy for deferral and amortization.

23. *Deferred commissions and expense on capital shares.* State, in a note referred to herein, the policy for deferral and amortization. These items may be shown as deductions from additional capital.

24. *Total assets and, when appropriate, other debits.*

LIABILITIES, RESERVES, AND STOCKHOLDERS' EQUITY

CURRENT LIABILITIES, WHEN APPROPRIATE (SEE § 210.3-12)

25. *Accounts and notes payable.* (a) State separately amounts payable to: (1) Banks, for borrowings; (2) trade creditors; (3) parents and subsidiaries; (4) other affiliates and other persons the investments in which are accounted for by the equity method; (5) underwriters, promoters, directors, officers, employees, and principal holders (other than affiliates) of equity securities of the person and its affiliates; and (6) others. Exclude from (5) amounts for purchases from such persons subject to usual trade terms, for ordinary travel expenses, and for other such items arising in the ordinary course of business. With respect to (3) and (4), state separately in the registrant's balance sheet the amounts which in the related consolidated balance sheet are (i) eliminated and (ii) not eliminated.

(b) If the aggregate amount of notes payable exceeds 10 percent of the aggregate amount of payables, the above information shall be set forth separately for accounts payable and notes payable.

26. *Accrued liabilities.* State separately: (a) Payrolls; (b) taxes, indicating the current portion of deferred income taxes (see Release No. AS-102); (c) interest; and (d) any other material items, indicating any liabilities to affiliates.

27. *Other current liabilities.* State separately: (a) Dividends declared; (b) current portion of bonds, mortgages, and similar debt; and (c) any other item in excess of 5 percent of total current liabilities, indicating any liabilities to affiliates. The remaining items may be shown in one amount.

28. *Total current liabilities, when appropriate.*

LONG-TERM DEBT

29. *Bonds, mortgages, and similar debt.* State separately here, or in a note referred to herein, each issue or type of obligation and such information as will indicate (see § 210.3-13): (a) The general character of each type of debt including the rate of interest; (b) the date of maturity, or if maturing serially, a brief indication of the serial maturities, such as "maturing serially from 1980 to 1990"; (c) if the payment of principal or interest is contingent, an appropriate indication of such contingency; (d) a brief indication of priority; (e) if convertible, the basis; and (f) the combined aggregate amount of maturities and sinking fund requirements for all issues, each year for the 5 years following the date of the balance sheet. For amounts owed to affiliates, state separately in the registrant's balance sheet the amounts which in the related consolidated balance sheet are (1) eliminated and (2) not eliminated.

30. *Unamortized debt discount and premium.* The amounts applicable to debt issues under captions 29, 31, 32, or 33 of § 210.5-02 shall be deducted from or added to the face amounts of the issues under the particular caption either individually or in the aggregate, but if the aggregate method is used the face amounts of the individual issues and the applicable unamortized discount or premium shall be shown parenthetically or otherwise.

31. *Indebtedness to affiliates and other persons—not current.* Include under this caption indebtedness to affiliates and indebtedness to other persons the investments in which are accounted for by the equity method. State separately in the registrant's balance sheet the indebtedness which in

the related consolidated balance sheet is (a) eliminated and (b) not eliminated.

32. *Other long-term debt.* Include under this caption all amounts of long-term debt not provided for under captions 29 and 31 above. State separately amounts payable to (a) persons specified in captions 25(a) (1), (2), and (5); and (b) others, specifying any material item. Indicate the extent that the debt is collateralized. Show here, or in a note referred to herein, the information required under caption 29.

OTHER LIABILITIES AND DEFERRED CREDITS

33. *Other liabilities.* State separately any item not properly classified in one of the preceding liability captions which is in excess of 5 percent of total liabilities.

34. *Commitments and contingent liabilities.* [See § 210.3-16(i).]

35. *Deferred credits.* State separately amounts for: (a) Deferred income taxes, (b) deferred tax credits, and (c) material items of deferred income. The current portion of deferred income taxes shall be included under caption 26 (see Release No. AS-102).

RESERVES

36. *Reserves.* State separately each major class and indicate clearly its purpose (see § 210.3-09).

MINORITY INTERESTS

37. *Minority interests in consolidated subsidiaries.* State separately in a note referred to herein amounts represented by preferred stock and the applicable dividend requirements if the preferred stock is material in relation to the consolidated stockholders' equity.

STOCKHOLDERS' EQUITY (See § 210.3-01(a))

38. *Capital shares.* State for each class of shares the title of issue, the number of shares authorized, the number of shares issued or outstanding, as appropriate (see §§ 210.3-14 and 210.3-15), and the dollar amount thereof, and, if convertible, the basis of conversion [see also § 210.3-16(f)(3)]. Show also the dollar amount, if any, of capital shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. Show here, or in a note or statement referred to herein, the changes in each class of capital shares for each period for which an income statement is required to be filed.

39. *Other stockholders' equity.* (a) Separate captions shall be shown for: (1) Paid-in additional capital, (2) other additional capital, and (3) retained earnings (1) appropriated and (2) unappropriated.

(b) If undistributed earnings of unconsolidated subsidiaries and 50 percent or less owned persons are included, state the amount in each category parenthetically or in a note referred to herein.

(c) For a period of at least 10 years subsequent to the effective date of a quasi-reorganization, any description of retained earnings shall indicate the point in time from which the new retained earnings dates and for a period of at least 3 years shall indicate the total amount of the deficit eliminated.

(d) A summary of each account under this caption setting forth the information prescribed in § 210.11-02 shall be given for each period for which an income statement or summary of operations is being filed.

40. *Total liabilities, reserves, and stockholders' equity.*

§ 210.5-03 Income statements.

Except as otherwise permitted by the Commission, the income statements filed for persons to whom this article is applicable shall comply with the provisions of

this rule (see § 210.3-01(a) and Release No. AS-41).

(a) All items of profit and loss given recognition in the accounts during each period covered by the income statements, except retroactive adjustments, shall be included in the income statement for each such period (see § 210.3-07).

(b) Only items entering into the determination of net income or loss may be included.

(c) If income is derived from sales of tangible products (caption 1A below) and/or operating revenues of public utilities (caption 1B below) and/or other revenues (caption 1C below), each class which is not more than 10 percent of the sum of the items may be combined with another class. If these items are combined, the cost of tangible goods sold (caption 2A below), operating expenses of public utilities (caption 2B below), and costs and expenses applicable to other revenues (caption 2C below) may be combined in the same manner.

1A. *Net sales of tangible products (gross sales less discounts, returns and allowances).* State separately, if practicable, (a) sales to unconsolidated affiliates, including 50-percent-owned persons, and (b) sales to others. If the total of sales and revenues under captions 1A, 1B, and 1C includes excise taxes in an amount equal to 10 percent or more of such total, the amount of such excise taxes shall be shown parenthetically or otherwise.

2A. *Cost of tangible goods sold.* (a) State the amount of cost of tangible goods sold as regularly computed under the system of accounting followed. State separately here or in a note referred to herein, if practicable, (a) purchases from unconsolidated affiliates, including 50-percent-owned persons, and (b) purchases from others. Indicate the amount of beginning and ending inventories and state the basis of determining such amounts.

(b) Merchandising organizations, both wholesale and retail, may include occupancy and buying costs under this caption. However, publicity costs shall be included under caption 4 below or shown separately.

1B. *Operating revenues of public utilities.* State separately, if practicable, revenues from (a) unconsolidated affiliates, including 50-percent-owned persons, and (b) others. A public utility company using a uniform system of accounts or a form for annual report prescribed by Federal or State authorities, or a similar system or report, shall follow the general segregation of operating revenues prescribed by such system or report.

2B. *Operating expenses of public utilities.* State separately, if practicable, purchases from and services rendered by (a) unconsolidated affiliates, including 50-percent-owned persons, and (b) others. A public utility company using a uniform system of accounts or a form for annual report prescribed by Federal or State authorities, or a similar system or report, shall follow the general segregation of operating expenses prescribed by such system or report.

1C. *Other revenues (such as royalties, rents, and the sales of services and intangible products, e.g., engineering and research and development).* State separately, if practicable, revenues from and sales to (a) unconsolidated affiliates, including 50-percent-owned persons, and (b) others.

2C. *Costs and expenses applicable to other revenues (caption 1C).* State the amount of costs and expenses applicable to other revenues as regularly computed under the system

of accounting followed. State separately here or in a note referred to herein, if practicable, purchases from and services rendered by (a) unconsolidated affiliates, including 50-percent-owned persons, and (b) others.

3. *Other operating costs and expenses.* State separately any material amounts not included in caption 2A, 2B, or 2C above.

4. *Selling, general and administrative expenses.* Any unusual material items shall be disclosed parenthetically or otherwise.

5. *Provision for doubtful accounts and notes.*

6. *Other general expenses.* Include items not normally included in caption 4 above. State separately any material amount.

OTHER INCOME

7. *Dividends.* State separately, if practicable, the amount of dividends from: (a) Securities of affiliates, (b) marketable securities, and (c) other securities. Exclude from this caption dividends from both subsidiaries and investments which are accounted for by the equity method.

8. *Interest on securities.* State separately, if practicable, the amount of interest from: (a) Securities of affiliates, (b) marketable securities, and (c) other securities. Disclose, parenthetically or in a note referred to herein, interest from securities of companies the investments in which are accounted for by the equity method.

9. *Profits on securities.* Profits shall be stated net of losses. No profits on the person's own equity securities, or profits of its affiliates on their own equity securities, shall be included under this caption. State, here or in a note referred to herein, the method followed in determining the cost of securities sold, e.g., "average cost," "first-in, first-out," or "identified certificate." Consideration should be given to reporting such transactions under caption 19, when appropriate.

10. *Miscellaneous other income.* State separately any material amounts, indicating clearly the nature of the transactions out of which the items arose. Miscellaneous other income may be stated net of miscellaneous income deductions, provided that any material amounts are set forth separately.

INCOME DEDUCTIONS

11. *Interest and amortization of debt discount and expense.* State separately: (a) Interest on bonds, mortgages, and similar debt; (b) amortization of debt discount and expense (or premium); and (c) other interest.

12. *Losses on securities.* Losses shall be stated net of profits. No losses on the person's own equity securities, or losses of its affiliates on their own equity securities, shall be included under this caption. State, here or in a note referred to herein, the method followed in determining the cost of securities sold, e.g., "average cost," "first-in, first-out," or "identified certificate." Consideration should be given to reporting such transactions under caption 19, when appropriate.

13. *Miscellaneous income deductions.* State separately any material amounts, indicating clearly the nature of the transactions out of which the items arose. Miscellaneous income deductions may be stated net of miscellaneous other income, provided that any material amounts are set forth separately.

14. *Income or loss before income tax expense and appropriate items below.*

15. *Income tax expense.* Include under this caption only taxes based on income. (See § 210.3-16(o).)

16. *Minority interest in income of consolidated subsidiaries.*

17. *Equity in earnings of unconsolidated subsidiaries and 50 percent or less owned persons.* The amount reported under this caption shall be stated net of any applicable tax provisions. State, parenthetically or in a

note referred to herein, the amount of dividends received from such persons. If justified by circumstances, this item may be presented in a different position and a different manner. (See § 210.3-01(a).)

18. *Income or loss before extraordinary items.*

19. *Extraordinary items, less applicable tax.* State separately any material items and disclose, parenthetically or otherwise, the tax applicable to each.

20. *Cumulative effects of changes in accounting principles.* State separately any material items and disclose, parenthetically or otherwise, the tax applicable to each.

21. *Net income or loss.* See § 210.5-02 (caption 39(d)).

22. *Earnings per share data.* Refer to the pertinent requirements in the appropriate filing form.

§ 210.5-04 What schedules are to be filed.

(a) Except as expressly provided otherwise in the applicable form—

(1) The schedules specified below in this section as Schedules I, IX, XI, XIII, XIV, XV, XVII, XVIII, and XIX shall be filed as of the dates of the most recent audited balance sheet and any subsequent unaudited balance sheet being filed for each person or group, provided that any such schedule (other than Schedules I, XIII, and XIX) may be omitted if both of the following conditions exist:

(i) The financial statements are being filed as part of an annual or other periodic report; and

(ii) The information that would be shown in the respective columns of such schedule would reflect no changes in any issue of securities of the registrant or any significant subsidiary in excess of 5 percent of the outstanding securities of such issue as shown in the most recently filed annual report containing the schedule.

(2) Schedule XIII, Capital Shares, may also be omitted if the above two conditions exist and any information required by column G of the schedule is shown in the related balance sheet or in a note thereto.

(3) All other schedules specified below in this rule as Schedules II, III, IV, V, VI, VII, VIII, X, XII, and XVI shall be filed for each period for which an income statement is required to be filed for each person or group.

(b) When information is required in schedules for both the registrant and the registrant and its subsidiaries consolidated it may be presented in the form of a single schedule, provided that items pertaining to the registrant are separately shown and that such single schedule affords a properly summarized presentation of the facts. If the information required by any schedule (including the notes thereto) may be shown in the related financial statement or in a note thereto without making such statement unclear or confusing, that procedure may be followed and the schedule omitted.

(c) Reference to the schedules shall be made in the appropriate captions of the financial statements. Where, pursuant to the applicable instructions, the supporting schedules do not accompany

the financial statements, references to such schedules shall not be made.

(d) The schedules shall be examined by the independent accountant if the related financial statements are so examined.

Schedule I—Marketable securities—other security investments. The schedule prescribed by § 210.12-02 shall be filed—

(1) In support of caption 2 of a balance sheet, if the greater of the aggregate cost or the aggregate market of marketable securities based on market quotations as of the balance sheet date constitutes 10 percent or more of total assets.

(2) In support of caption 12 of a balance sheet, if the amount at which other security investments is shown in such balance sheet constitutes 10 percent or more of total assets.

(3) In support of captions 2 and 12 of a balance sheet, if the amount at which other security investments is shown in such balance sheet plus the greater of the aggregate cost or the aggregate market of marketable securities based on market quotations as of the balance sheet date constitutes 15 percent or more of total assets.

Schedule II—Amounts receivable from underwriters, promoters, directors, officers, employees, and principal holders (other than affiliates) of equity securities of the person and its affiliates. The schedule prescribed by § 210.12-03 shall be filed with respect to each person among the underwriters, promoters, directors, officers, employees, and principal holders (other than affiliates) of equity securities of the person and its affiliates, from whom an aggregate indebtedness of more than \$20,000 or 1 percent of total assets, whichever is less, is owed, or at any time during the period for which related income statements are required to be filed, was owed. For the purposes of this schedule, exclude in the determination of the amount of indebtedness all amounts receivable from such persons for purchases subject to usual trade terms, for ordinary travel and expense advances and for other such items arising in the ordinary course of business.

Schedule III—Investments in, equity in earnings of, and dividends received from affiliates and other persons. The schedule prescribed by § 210.12-04 shall be filed in support of caption 10 of each balance sheet. This schedule may be omitted if (1) neither the sum of captions 10 and 11 in the related balance sheet nor the amount of caption 31 in such balance sheet exceeds 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period, or (2) there have been no material changes in the information required to be filed from that last previously reported.

Schedule IV—Indebtedness of affiliates and other persons—not current. The schedule prescribed by § 210.12-05 shall be filed in support of caption 11 of each balance sheet; however, the required information may be presented separately on Schedule III or Schedule X. This schedule may be omitted if (1) neither the sum of captions 10 and 11 in the related balance sheet nor the amount of caption 31 in such balance sheet exceeds 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period, or (2) there have been no material changes in the information required to be filed from that last previously reported.

Schedule V—Property, plant and equipment. The schedule prescribed by § 210.12-06 shall be filed in support of caption 14 of each balance sheet, provided that this schedule may be omitted if the total shown by caption 14 does not exceed 5 percent of total

assets as shown by the related balance sheet at both the beginning and end of the period and if neither the additions nor the deductions during the period exceeded 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period.

Schedule VI—Accumulated depreciation, depletion, and amortization of property, plant, and equipment. The schedule prescribed by § 210.12-07 shall be filed in support of caption 15 of each balance sheet. This schedule may be omitted if Schedule V is omitted.

Schedule VII—Intangible assets, deferred research and development expenses, preoperating expenses, and similar deferrals. Part A of the schedule prescribed by § 210.12-08 shall be filed in support of caption 16 and Part B shall be filed in support of caption 20 of each balance sheet, provided that either part may be omitted if the total shown by the related balance sheet caption does not exceed 5 percent of total assets as shown in the related balance sheet at both the beginning and end of the period and if neither the additions nor the deductions during the period exceeded 5 percent of total assets as shown by the related balance sheet at the beginning or end of the period.

Schedule VIII—Accumulated depreciation and amortization of intangible assets. The schedule prescribed by § 210.12-09 shall be filed in support of caption 17 of each balance sheet. This schedule may be omitted if Schedule VII is omitted.

Schedule IX—Bonds, mortgages, and similar debt. The schedule prescribed by § 210.12-10 shall be filed in support of caption 29 of a balance sheet.

Schedule X—Indebtedness to affiliates and other persons—not current. The schedule prescribed by § 210.12-11 shall be filed in support of caption 31 of each balance sheet; however, the required information may be presented separately on Schedule III or Schedule IV. This schedule may be omitted if (1) neither the sum of captions 10 and 11 in the related balance sheet nor the amount of caption 31 in such balance sheet exceeds 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period, or (2) there have been no changes in the information required to be filed from that last previously reported.

Schedule XI—Guarantees of securities of other issuers. The schedule prescribed by § 210.12-12 shall be filed with respect to any guarantees of securities of other issuers by the person for which the statement is filed.

Schedule XII—Valuation and qualifying accounts and reserves. The schedule prescribed by § 210.12-13 shall be filed in support of valuation and qualifying accounts and reserves included in each balance sheet but not included in Schedule VI or VIII. (See § 210.3-02.)

Schedule XIII—Capital shares. The schedule prescribed by § 210.12-14 shall be filed in support of caption 38 of a balance sheet.

Schedule XIV—Warrants or rights. The schedule prescribed by § 210.12-15 shall be filed with respect to warrants or rights granted by the person for which the statement is filed to subscribe for or purchase securities to be issued by such person.

Schedule XV—Other securities. If there are any classes of securities not included in Schedules IX, XI, XIII, or XIV, set forth in this schedule information concerning such securities corresponding to that required for the securities included in such schedules. Information need not be set forth, however, as to notes, drafts, bills of exchange, or bankers' acceptances, having a maturity at the time of issuance of not exceeding 1 year.

Schedule XVI—Supplementary income statement information. The schedule prescribed by § 210.12-16 may be omitted for

each income statement in which sales or operating revenues were not of significant amount. This schedule may also be omitted if the information required by column B and instructions 3 and 4 thereof is furnished in the income statement or in a note thereto.

Schedule XVII—Real estate and accumulated depreciation. The schedule prescribed by § 210.12-42 shall be filed for real estate (and the related accumulated depreciation) held by persons a substantial portion of whose business is that of acquiring and holding for investment real estate or interests in real estate, or interests in other persons a substantial portion of whose business is that of acquiring and holding real estate or interests in real estate for investment. Real estate used in the business shall be excluded from the schedule.

Schedule XVIII—Mortgage loans on real estate. The schedule prescribed by § 210.12-43 shall be filed by persons specified under Schedule XVII for investments in mortgage loans on real estate.

Schedule XIX—Other investments. If there are any other investments, under caption 13 of § 210.5-02 or elsewhere in a balance sheet, not required to be included in Schedule I or III, there shall be set forth in a separate schedule information concerning such investments corresponding to that prescribed by Schedule I. This schedule may be omitted if the total amount of such other investments does not exceed 5 percent of total assets as shown by such balance sheet.

ARTICLE 7—INSURANCE COMPANIES OTHER THAN LIFE AND TITLE INSURANCE COMPANIES

(The following amended rules reflect changes in rule numbers and captions in other sections of Regulation S-X (Part 210 of this chapter) which are referred to in these rules.)

§ 210.7-03-17 Commitments and contingent liabilities.—See §§ 210.3-16 (i) and 210.7-05-4.

§ 210.7-03-19 Surplus.

(c) An analysis of each surplus account setting forth the information prescribed in § 210.11-02 shall be given for each period for which a profit and loss statement is filed, as a continuation of the related profit and loss statement or in the form of a separate statement of surplus, and shall be referred to here. In this statement caption 3, Other additions, shall be subdivided to show: (1) Unrealized gain on bonds and stocks from change in market values, (2) unrealized gain on other investments from change in market values, and (3) all others, designating clearly the nature thereof. Likewise, caption 5, Other deductions, shall be subdivided to show: (i) Unrealized loss on bonds and stocks from change in market values, (ii) unrealized loss on other investments from change in market values, and (iii) all others, designating clearly the nature thereof.

§ 210.7-05 Special notes to financial statements.

3. State in a note the amount of surplus not available for payment of dividends to stockholders. See § 210.3-16(h).

ARTICLE 7A—LIFE INSURANCE COMPANIES

(The following amended rules reflect changes in rule numbers and captions in other sections of Regulation S-X this Part 210 which are referred to in these rules.)

§ 210.7A-03-17 Commitments and contingent liabilities.—See §§ 210.3-16 (i) and 210.7A-05-3.

§ 210.7A-03-20 Surplus.

(c) An analysis of each surplus account setting forth the information prescribed in § 210.11-02 shall be given for each period for which a profit and loss statement is filed, as a continuation of the related profit and loss statement or in the form of a separate statement of surplus, and shall be referred to here. In this statement caption 3, Other additions, shall be subdivided to show: (1) Unrealized gain on bonds and stocks from change in admitted asset values; (2) unrealized gain on other investments from change in admitted asset values; (3) realized gain on investments; and (4) all others, designating clearly the nature thereof. Likewise, caption 5, Other deductions, shall be subdivided to show: (i) Unrealized loss on bonds and stocks from change in admitted asset values; (ii) unrealized loss on other investments from change in admitted asset values; (iii) realized loss on investments; and (iv) all others, designating clearly the nature thereof.

§ 210.7A-05 Special notes to financial statements.

2. State in notes or otherwise:
(a) No change.

ARTICLE 12—FORM AND CONTENT OF SCHEDULES

§ 210.12-01 Application of §§ 210.12-01 to 210.12-43.

These sections prescribe the form and content of the schedules required by §§ 210.5-04, 210.5a-07, 210.6-10, 210.6-13, 210.6-24, 210.6-34, 210.7-06, 210.7A-06, and 210.9-04 (Rules 5-04, 5A-07, 6-10, 6-13, 6-24, 6-34, 7-06, 7A-06, and 9-04).

§ 210.12-02 Marketable securities—other security investments.

Column A	Column B	Column C	Column D:
Name of issuer and title of each issue ¹	Number of shares of units—principal amount of bonds and notes	Amount at which shown in the balance sheet ²	Value based on market quotations at balance sheet date

¹ (a) Each issue shall be stated separately, except that reasonable groupings, without enumeration, may be made of (1) securities issued or guaranteed by municipalities, States, the U.S. Government or agencies thereof and (2) securities issued by others for which the amounts shown in column C in the aggregate are not more than 2 percent of total assets.

(b) In the case of bank holding companies group separately (1) securities of banks and (2) other securities, and, in column C show totals for each group.

² State the basis of determining the amounts in column C. Column C shall be totaled to correspond to the respective balance sheet captions.

³ This column may be omitted if all amounts that would be shown are the same as those shown in column C.

§ 210.12-03 Amounts receivable from underwriters, promoters, directors, officers, employees, and principal holders (other than affiliates) of equity securities of the person and its affiliates.

Column A	Column B	Column C	Column D	Column E
Name of debtor ¹	Balance at beginning of period	Additions	Deductions	Balance at end of period
			(1)	(2)
			Amounts collected ²	Amounts written off
			Current	Not current

¹ Include in this schedule both accounts receivable and notes receivable and provide in a note hereto pertinent information, such as the due date, interest rate, terms of repayment and collateral, if any, for the amounts receivable from each person named in column A as of the date of the most recent balance sheet being filed.

² If collection was other than in cash, explain.

(b) The amount of surplus not available for payment of dividends to stockholders. See § 210.3-16(h).

ARTICLE 11—CONTENT OF STATEMENTS OF OTHER STOCKHOLDERS' EQUITY

§ 210.11-01 Application of §§ 210.11-01 and 210.11-02.

This article prescribes the content of the statements of other stockholders' equity specified in § 210.5-02 (caption 39), § 210.6-22 (caption 26), § 210.7-03 (caption 19), and § 210.7A-03 (caption 20).

§ 210.11-02 Statements of other stockholders' equity.

A summary shall be given for each class of other stockholders' equity set forth in the related balance sheet.

1. *Balance at beginning of period.* State separately the adjustments to the balance at the beginning of the first period of the report for items which were retroactively applied to periods prior to that period. (See § 210.5-03(a).)

2. *Net income or loss from income statement.*

3. *Other additions.* State separately any material amounts, indicating clearly the nature of the transactions out of which the items arose.

4. *Dividends.* For each class of shares state the amount per share and in the aggregate.

(a) *Cash.*

(b) *Other.* Specify.

5. *Other deductions.* State separately any material amounts, indicating clearly the nature of the transactions out of which the items arose.

6. *Balance at end of period.* The balance at the end of the most recent period shall agree with the related balance sheet caption.

§ 210.12-04 Investments in, equity in earnings of, and dividends received from affiliates and other persons.

Column A Name of issuer and description of investment ¹	Column B Balance at beginning of period		Column C Additions		Column D Deductions		Column E Balance at end of period		Column F Dividends received during the period from investments not accounted for by the equity methods ⁴
	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)	
	Number of shares or units; ² Principal amounts of bonds and notes	Amount in dollars	Equity taken up in earnings (losses) of affiliates and other persons for the period	Other ⁴	Distribution of earnings by persons in which earnings (losses) were taken up ³	Other ⁴	Number of shares or units; ² Principal amount of bonds and notes	Amount in dollars ⁷	

¹ (a) Group separately securities of (1) subsidiaries consolidated; (2) subsidiaries not consolidated; (3) other affiliates; and (4) other persons, the investment in which is accounted for by the equity method, showing shares and bonds separately in each case. Investments in individual affiliates which, when considered with related advances, exceed 2 percent of total assets shall be stated separately. Dividends from (1) marketable securities and (2) other security investments shall also be included and may be shown in separate aggregate amounts.

(b) Those foreign investments, the enumeration of which would be detrimental to the registrant, may be grouped.

² Disclose, in the column or in a note hereto, the percentage of ownership interest represented by the shares or units, if material.

³ The total of col. C(1) shall be reconciled with the amount of the related income statement caption.

⁴ Briefly describe each item in col. C(2); if the cost thereof represents other than a

cash expenditure, explain. If acquired from an affiliate (and not an original issue of that affiliate) at other than cost to the affiliate, show such cost, provided the acquisition by the affiliate was within 2 years prior to the acquisition by the person for which the statement is filed.

⁵ As to any dividends other than cash, state the basis on which they have been taken up in the accounts, and the justification for such action. If any such dividends received from affiliates have been credited in the accounts in an amount differing from that charged to retained earnings by the disbursing company, state the amount of such difference and explain.

⁶ Briefly describe each item in col. D(2) and state: (a) Cost of items sold and how determined; (b) amount received (if other than cash, explain); and (c) disposition of resulting profit or loss.

⁷ The total (or a subtotal) of col. E(2) shall be reconciled with the amount reported under caption 19 of the related balance sheet.

§ 210.12-05 Indebtedness of affiliates and other persons—not current.

Column A Name of person ¹	Column B Balance at beginning of period	Column C Balance at end of period ²
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¹ The persons named shall be grouped as in the related schedule required for investments in affiliates and other persons. The information called for shall be shown separately for any persons whose investments were shown separately in such related schedule.

² For each person named in col. A, explain in a note hereto the nature and purpose of any increase during the period that is in excess of 10 percent of the related balance at either the beginning or end of the period.

§ 210.12-06 Property, plant and equipment.¹

Column A Classification ²	Column B Balance at beginning of period ³	Column C Additions at cost ⁴	Column D Retirements ⁵	Column E Other changes—add (deduct)—describe ⁶	Column F Balance at end of period
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¹ Comment briefly on any significant and unusual additions, abandonments, or retirements, or any significant and unusual changes in the general character and location, of principal plants and other important units, which may have occurred within the period.

² (a) Show by major classifications, such as land, buildings, machinery and equipment, leaseholds, or functional groupings. If such classification is not present or practicable, this may be stated in one amount. The additions included in col. C shall, however, be segregated in accordance with an appropriate classification. If property, plant and equipment abandoned is carried at other than a nominal amount indicate, if practicable, the amount thereof and state the reasons for such treatment. Items of minor importance may be included under a miscellaneous caption.

(b) Public utility companies: A public utility company shall, to the extent practicable, classify utility plant by the type of service rendered (such as electric, gas, transportation, and water) and shall state separately under each of such service classifications the major subclassifications of utility plant accounts.

(c) Mining companies using §§ 210.5a-01 to 210.5a-07: Such mining companies shall include herein only depreciable mine property, plant, and equipment at dollar amounts required by the instructions set forth under caption 13, property, plant, and equipment, of §§ 210.5a-01 to 210.5a-07. A mining company falling into this category shall also, to the extent practicable, observe the other instructions set forth under this rule.

³ If neither the total additions nor total deductions during any of the periods covered by the schedules amount to more than 10 percent of the ending balance of that period and a statement to that effect is made, the information required by cols. B, C, D, and E may be omitted for that period, provided that the totals of cols. C and D are given in a note hereto and provided further than any information required by instructions 4, 5, and 6 shall be given and may be in summary form.

⁴ For each change in accounts in col. C that represents anything other than an addition from acquisition, and for each change in that column that is in excess of 2 percent of total assets, at either the beginning or end of the period, state clearly the nature of the change and the other accounts affected. If cost of property additions represents other than cash expenditures, explain. If acquired from an affiliate at other than cost to the affiliate, show such cost, provided the acquisition by the affiliate was within 2 years prior to the acquisition by the person for which the statement is filed.

⁵ If changes in col. D are stated at other than cost, explain if practicable.

⁶ State clearly the nature of the changes and the other accounts affected. If provision for depreciation, depletion, and amortization of property, plant, and equipment is credited in the books directly to the asset accounts, the amounts shall be stated in col. E with explanations, including the accounts to which charged.

§ 210.12-07 Accumulated depreciation, depletion and amortization of property, plant, and equipment.¹

Column A Description ²	Column B Balance at beginning of period	Column C Additions charged to costs and expenses	Column D Retirements	Column E Other changes—add (deduct)—describe	Column F Balance at end of period
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¹ (a) Insofar as amounts for depreciation, depletion, and amortization are credited to the property accounts, such amounts shall be shown in the schedule of property, plant, and equipment, as there required.

(b) Mining companies using §§ 210.5a-01 to 210.5a-07: Such mining companies shall include herein only the amount of the accumulated depreciation, depletion, and amortization of mine property, plant, and equipment, and unrecovered promotional, exploratory, and development costs applicable to the amounts set forth in the schedule

filed pursuant to § 210.12-06 (rule 12-06) and § 210.12-06A (rule 12-06A). A mining company falling into this category shall also, to the extent practicable, observe the other instructions set forth under this rule.

² If practicable, accumulated depreciation shall be shown to correspond with the classifications of property set forth in the related schedule of property, plant, and equipment, separating especially depreciation, depletion, amortization, and provision for retirement.

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§ 210.12-08 Intangible assets, deferred research and development expenses, preoperating expenses and similar deferrals.^{1, 2}

Column A	Column B	Column C	Column D		Column E	Column F
Description ¹	Balance at beginning of period ⁴	Additions at cost—describe ²	Deductions ³		Other changes—add (deduct)—describe	Balance at close of period
			(1) Charged to costs and expenses	(2) Charged to other accounts—describe		

¹ The information required shall be presented in 2 parts: Part A—Intangible assets, Part B—Deferred research and development expenses, preoperating expenses, and similar deferrals.

² If in the accounts it is not practicable to separate intangible assets from property, plant, and equipment, the information here required may be included in the schedule for property, plant, and equipment. In such event state in the balance sheet any known amount of intangibles so included with an indication that a further unknown amount of intangibles is also so included.

³ Show by major classifications in each part, such as franchises, goodwill, deferred research, and development expenses, etc. If such classification is not present or practicable, each part may be stated in one amount. The additions included in col. C shall, however, be segregated in accordance with an appropriate classification. Items of minor importance may be included under a miscellaneous caption in each part.

⁴ If neither the total additions nor total deductions of a part during any of the periods covered by the schedules amount to more than 10 percent of the closing balance of the part for that period and a statement to that effect is made, the information required by cols. B, C, D, and E may be omitted for that part for that period by any company other than a public utility company. Any information required by instruction 5 or 6 shall, however, be given and may be in summary form.

⁵ For each change in intangible asset accounts in col. C that represents anything other than an addition from acquisition, and for each change in that column in either Part A or B that is in excess of 2 percent of total assets at either the beginning or end of the period, state clearly the nature of the change and the other accounts affected. If cost of additions represents other than cash expenditures, explain. If acquired from an affiliate at other than cost to the affiliate, show such cost, provided the acquisition by the affiliate was within 2 years prior to the acquisition by the person for which the statement is filed.

⁶ If provision for depreciation and amortization of intangible assets is credited in the books directly to the intangible asset account, the amounts shall be stated in col. D with explanations, including the accounts to which charged. If the changes in col. D represent anything other than regular amortization in either Part A or B, state clearly the nature of the changes.

⁷ If an account for accumulated depreciation or amortization is maintained for any item of deferred research and development expenses, preoperating expenses, and similar deferrals, § 210.12-09 shall apply to such accounts and that schedule shall be divided into parts A and B as shown above.

§ 210.12-09 Accumulated depreciation and amortization of intangible assets.¹

Column A	Column B	Column C	Column D	Column E
Description ²	Balance at beginning of period	Additions		Deductions—describe
		(1) Charged to costs and expenses	(2) Charged to other accounts—describe	

¹ Insofar as amounts for depreciation and amortization are credited to the intangible asset accounts, such amounts shall be shown in the schedule of intangible assets, as there required.

² If practicable, accumulated depreciation and amortization shall be shown to correspond with the classifications set forth in the related schedule of intangible assets.

³ See instruction 7 of § 210.12-08.

§ 210.12-10 Bonds, mortgages and similar debt.

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
Name of issuer and title of each issue ¹	Amount authorized by indenture	Amount issued and not retired or cancelled	Amount included in column C, which is		Amount included in sum extended under caption "bonds, mortgages, and similar debt" in related balance sheet ²	Amount in sinking and other special funds of issuer thereof ³	Amount pledged by issuer thereof ⁴
			(1) Held by or for account of issuer thereof	(2) Not held by or for account of issuer thereof			

¹ Include in this column each issue authorized, whether issued or not and whether eliminated in consolidation or not. For each issue listed give the information called for by columns B to H, inclusive.

² This column is to be totaled to correspond to the related balance sheet caption. If amounts shown in this column differ from face amounts shown in column C or D, explain.

³ Indicate by means of an appropriate symbol any amounts not included in subcolumn D(1).

⁴ Affiliates for which statements are filed herewith shall include affiliates for which separate financial statements are filed and those included in consolidated or combined statements, other than the issuer of the particular security.

⁵ Include in this subcolumn only amounts held by persons included in the consolidated statement in support of which this schedule is being filed. If not eliminated in the consolidation, explain in a note.

§ 210.12-11 Indebtedness to affiliates and other persons—not current.

Column A	Column B	Column C
Name of person ¹	Balance at beginning of period	Balance at end of period ²

¹ The persons named shall be grouped as in the related schedule required for investments in affiliates and other persons. The information called for shall be shown separately for any persons whose investments were shown separately in such related schedule.

² For each person named in column A, explain in a note hereto the nature and purpose of any increase during the period that is in excess of 10 percent of the related balance at either the beginning or end of the period.

§ 210.12-12 Guarantees of Securities of other issuers.¹
of securities

Column A	Column B	Column C	Column D	Column E	Column F	Column G
Name of issuer of securities guaranteed by person for which statement is filed	Title of issue of each class of securities guaranteed	Total amount guaranteed and outstanding ²	Amount owned by person or persons for which statement is filed	Amount in treasury of issuer of securities guaranteed	Nature of guarantee ³	Nature of any securities guaranteed in principal, interest, sinking fund or redemption provision, or payment of dividends ⁴

¹ Indicate in a note to the most recent schedule being filed for a particular person or group any significant changes since the date of the related balance sheet. If this schedule is filed in support of consolidated statements or combined statements, there shall be set forth guarantees by any person included in the consolidated or combined balance sheet need not be set forth.

² Indicate any amounts included in column C which are included also in column D or E.

³ There need be made only a brief statement of the nature of the guarantee, such as "Guarantee of principal and interest," "Guarantee of interest," or "Guarantee of dividends." If the guarantee is of interest or dividends, state the annual aggregate amount of interest or dividends so guaranteed.

⁴ Only a brief statement as to any such defaults need be made.

§ 210.12-13 Violation and qualifying accounts and reserves.

Column A	Column B	Column C	Column D	Column E
Description ¹	Balance at beginning of period	<div> <div>(1)</div> <div>Charged to costs and expenses</div> </div>	<div> <div>(2)</div> <div>Charged to other accounts—describe</div> </div>	Balance at end of period

¹ List, by major classes, all valuation and qualifying accounts and reserves not included in specific schedules. Identify each such class of valuation and qualifying accounts and reserves by descriptive title. Group (a) those valuation and qualifying accounts which are deducted in the balance sheet from the assets to which they apply and (b) those reserves which support the balance sheet caption, Reserves. Valuation and qualifying accounts and reserves as to which the additions, deductions, and balances were not individually significant may be grouped in one total and in such case the information called for under columns C and D need not be given.

¹ List, by major classes, all valuation and qualifying accounts and reserves not included in specific schedules. Identify each such class of valuation and qualifying accounts and reserves by descriptive title. Group (a) those valuation and qualifying accounts which are deducted in the balance sheet from the assets to which they apply and (b) those reserves which support the balance sheet caption, Reserves. Valuation and qualifying accounts and reserves as to which the additions, deductions, and balances were not individually significant may be grouped in one total and in such case the information called for under columns C and D need not be given.

§ 210.12-14 Capital shares.¹

Column A	Column B	Column C	Column D	Column E	Column F	Column G
Name of issuer and title of issue ² by charter authorized shares issued and not retired or canceled	Number of shares included in column C which are "capital shares"	Number of shares issued or included in related balance sheet under caption "capital shares"	Number of shares held by or for account of issuer thereof	Shares issued or shown on or included in related balance sheet under caption "capital shares"	Number of shares held by affiliates for which statements are filed herewith ⁴ conversions and other rights	Number of shares reserved for statements options, warrants, conversions and other rights
	(1)	(2)	(3)	(4)	(5)	(6)

¹ Indicate in a note to the most recent schedule being filed for a particular person or group any significant changes since the date of the related balance sheet.

² Include in this column each issue authorized, whether issued or not and whether eliminated in consolidation not provided that when this schedule is filed in support of a consolidated statement the information required by columns A to G, inclusive, need not be given as to any consolidated subsidiary if substantially all of the outstanding shares of each issue of capital shares (other than directors' qualifying shares) of such subsidiary are held by one or more of the persons included in such consolidated statement; if the answer is "no," give the name of each such subsidiary.

³ For each issue or group listed give the information called for by columns B to G, inclusive.

⁴ This column is to be totaled to correspond to the related balance sheet caption. In the case of consolidated subsidiaries only the minority interest need be set forth.

⁵ Affiliates for which statements are filed herewith shall include affiliates for which separate financial statements are filed and those included in consolidated or combined statements, other than the issuer of the particular security.

⁶ Include in this subcolumn only amounts held by persons included in the consolidated statement in support of which this schedule is being filed. If not eliminated in the consolidation, explain in a note.

§ 210.12-15 Warrants or rights.¹

Column A	Column B	Column C	Column D	Column E	Column F	Column G
Title of issue of securities called for by warrants or rights	Amount of securities called for by each warrant or right	Number of warrants or rights outstanding ²	Aggregate amount of securities called for by warrants or rights outstanding	Date from which warrants or rights are exercisable	Expiration date of warrants or rights	Price at which warrant or right exercisable

¹ Indicate in a note to the most recent schedule being filed for a particular person or group any significant changes since the date of the related balance sheet.

² State separately amounts held by persons for which separate financial statements are filed or which are included in consolidated or combined statements, other than the issuer of the particular security.

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§ 210.12-16 Supplementary income statement information.¹

Column A	Column B ²
Item	Charged to costs and expenses
1. Maintenance and repairs.....	
2. Depreciation, depletion and amortization of property, plant and equipment.....	
3. Depreciation and amortization of intangible assets.....	
4. Taxes, other than income taxes ³	
5. Rents ⁴	
6. Royalties.....	
7. Advertising costs ⁵	
8. Research and development costs.....	

¹ State, for each of the items noted in column A which exceeds 1 percent of total sales and revenues as reported in the related income statement, the amount called for in column B.

² Totals may be stated in column B without further designation of the accounts to which charged.

³ State separately each category of tax which exceeds 1 percent of total sales and revenues.

⁴ Include rents applicable to leased personal property.

⁵ This item shall include all costs related to advertising the company's name, products or services in newspapers, periodicals or other advertising media.

§ 210.12-42 Real estate and accumulated depreciation.¹

[For certain real estate companies]¹

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I
Description ²	Encumbrances	Initial cost to company	Cost capitalized subsequent to acquisition	Gross amount at which carried at close of period ^{3,4,5,7}				Life on which depreciation in latest income statements is computed
		Land	Buildings and improvements	Improve- Carrying ments costs	Land	Buildings and improvements	Total	
						Accumulated depreciation	Date of construction	Date acquired

¹ All money columns shall be totaled.

² The description for each property should include type of property (e.g., unimproved land, shopping center, garden apartments, etc.) and the geographical location.

³ The required information is to be given as to each individual investment included in col. E except that an amount not exceeding 5 percent of the total of col. E may be listed in one amount as "miscellaneous investments."

⁴ In a note to this schedule, furnish a reconciliation, in the following form, of the total amount at which real estate was carried at the beginning of each period for which income statements are required, with the total amount shown in col. E.

Balance at beginning of period..... \$.....

Additions during period:

Acquisitions through foreclosure..... \$.....

Other acquisitions.....

Improvements, etc.....

Other (describe).....

Deductions during period:

Cost of real estate sold.....

Other (describe).....

Balance at close of period.....

If additions, except acquisitions through foreclosure, represent other than cash expenditures, explain. If any of the changes during the period result from transactions, directly or indirectly with affiliates, explain the basis of such transactions and state the amounts involved.

A similar reconciliation shall be furnished for the accumulated depreciation.

⁵ If any item of real estate investments has been written down or reserved against, describe the item and explain the basis for the writedown or reserve.

⁶ State in a note to col. E the aggregate cost for Federal income tax purposes.

⁷ The amount of all intercompany profits included in the total of col. E shall be stated if material.

§ 210.12-43 Mortgage loans on real estate.¹

[For certain real estate companies]¹

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
Description ^{2,3,4}	Interest rate	Final maturity date	Periodic payment terms ⁵	Prior liens	Face amount of mortgages ⁶	Carrying amount of mortgages ^{2,6,7,8,9}	Principal amount of loans subject to delinquent principal or interest ¹⁰

¹ All money columns shall be totaled.

² The required information is to be given for each individual mortgage loan which exceeds 3 percent of the total of col. G.

³ If the portfolio includes large numbers of mortgages most of which are less than 3 percent of col. G, the mortgages not required to be reported separately should be grouped by classifications that will indicate the dispersion of the portfolio; i.e., for a portfolio of mortgages on single-family residential housing. The description should also include number of loans by original loan amounts (e.g., over \$100,000, \$50,000 to \$99,999, \$20,000 to \$49,999, under \$20,000) and type loan (e.g., VA, FHA, conventional). Interest rates and maturity dates may be stated in terms of ranges. Data required by cols. D, E, and F may be omitted for mortgages not required to be reported individually.

⁴ Loans should be grouped by categories; e.g., 1st mortgage, 2d mortgage, construction loans, etc., and for each loan the type of property; e.g., shopping center, high-rise apartments, etc., and its geographic location should be stated.

⁵ State whether principal and interest is payable at level amount over life to maturity or at varying amounts over life to maturity. State amount of balloon payment at maturity, if any. Also state prepayment penalty terms, if any.

⁶ In a note to this schedule, furnish a reconciliation, in the following form, of the carrying amount of mortgage loans at the beginning of each period for which income statements are required, with the total amount shown in col. G:

Balance at beginning of period..... \$.....

Additions during period:

New mortgage loans..... \$.....

Other (describe).....

Deductions during period:

Collections of principal.....

Foreclosures.....

Cost of mortgages sold.....

Amortization of premium.....

Other (describe).....

Balance at close of period.....

If additions represent other than cash expenditures, explain. If any of the changes during the period result from transactions, directly or indirectly with affiliates, explain the bases of such transactions, and the amounts involved. State the aggregate mortgages (a) renewed and (b) extended. If the carrying amount of new mortgages is in excess of the unpaid amount of the extended mortgages, explain.

⁷ If any item of mortgage loans on real estate investments has been written down or reserved against, describe the item and explain the basis for the writedown or reserve.

⁸ State in a note to Col. G the aggregate cost for Federal income tax purposes.

⁹ The amount of all intercompany profits in the total of col. G shall be stated, if material.

¹⁰ (a) Interest in arrears for less than 3 months may be disregarded in computing the total amount of principal subject to delinquent interest. (b) Of the total principal amount state the amount acquired from controlled and other affiliates.

[FR Doc.72-11139 Filed 7-20-72; 8:45 am]

[Release No. 34-9658]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

Reports To Be Made by Certain Exchange Members, Brokers, and Dealers and Related Audit Requirements of Form X-17A-5

The Securities and Exchange Commission today announced the adoption of rule amendments to require broker-dealer firms to report to customers their financial condition. The need for such requirements became apparent with the operation and back office crisis of 1968, the bear market that followed and the subsequent failure of numerous broker-dealers who held public funds and securities. This action amends paragraphs (a), (b), and (c) and adopts paragraphs (k), (l), (m), (n), and (o) of Rule 17a-5, (17 CFR 240.17a-5) and amends the Audit Requirements of Form X-17A-5 (17 CFR 240.617).

The amendments require the sending directly to the customer of a broker-dealer certain information which the Commission feels essential for a customer to have in order to judge whether his broker-dealer is financially sound and able to efficiently and safely handle his securities transactions, moneys, and securities.

The rule will also require, that a complete set of financial statements be furnished to the Commission in addition to Form X-17A-5.²

On December 3, 1971, in Securities Exchange Act Release No. 9404, and in the FEDERAL REGISTER for December 30, 1971, at 36 F.R. 25236, the Commission published the proposed rule and amendments for comment. The Commission has considered the comments and suggestions received and has adopted the amendments as set forth below.

Paragraph (k) of the rule requires broker-dealers to file with the Commission annually, in addition to Form X-17A-5, a complete set of unconsolidated financial statements which shall be governed as to form and content by Regulation S-X (17 CFR Part 210). These statements shall be filed on a confidential basis. Paragraph (k) (2) of the rule generally exempts those broker-dealers who normally do not hold customers' funds and securities or who are engaged solely in the sale of mutual funds or variable annuity contracts.

In connection with those amendments which now require filing of audited income data with the Commission, subdivision (ii) of paragraph (a) (2) and subdivision (i) of paragraph (c) (1) have been amended to extend to sixty (60) days from the date of the financial statements, the time for filing Form X-17A-5.

Paragraph (b) (3) and the related audit requirements of Form X-17A-5 have been amended to make the accountant's letter commenting upon a material inadequacy in the firm's internal control a public document.

Paragraph (l) of the rule has been adopted to provide an alternative method of reporting for publicly owned broker-dealers and other firms who prepare general purpose certified financial statements on an annual basis.

New paragraph (m) of the rule requires that every broker or dealer who is not exempted by paragraph (k) (2) of the rule shall send to its customers at the same time as it files the information required by paragraph (k) with the Commission:

(1) An unconsolidated balance sheet with appropriate notes including information with regard to the broker or dealer's subordinated capitalization;

(2) A statement indicating the amount of the firm's net capital and its required net capital computed in accordance with the capital rule applicable to it and an explanation thereof;³

(3) A statement as to whether any material inadequacies in the firm's internal control were found to exist by its accountants;

(4) A statement indicating that Part I of the most recent annual report on Form X-17A-5 of the broker or dealer is available for examination and copying at the principal office of the member, broker, or dealer and at the Commission.⁴

Paragraph (n) of the rule requires the broker or dealer to send to customers quarterly an uncertified balance sheet and a statement of the firm's net capital and required net capital computed in accordance with the net capital rule to which it is subject.

Paragraph (o) defines customer to include any person, including a customer of an introducing or forwarding broker or dealer for or with whom the broker-dealer has executed a transaction or for whom he holds or owes money or securities for the month or the month following which the report is sent. This definition is intended to permit a broker or dealer to include the reports required by this rule in the mailing of customer statements.

Commission action. The Commission acting pursuant to the provisions of the Securities Exchange Act of 1934 and particularly sections 10(b); 15(c) (1), (2),

² For some guidance regarding an explanation of net capital, see Securities Act of 1933 Release No. 5222, Jan. 3, 1972, Appendix A.

⁴ In this connection, paragraph (a) (2) of Rule 17a-5 has been adopted to provide for the availability of the form at the principal office of the broker-dealer.

and (3); 17(a); and 23(a) thereof, and deeming such action necessary in the public interest, for the protection of investors, and for the execution of its functions, hereby amends § 240.17a-5 of Part 240 of Chapter II of Title 17 of the Code of Federal Regulations by amending paragraphs (a), (b) (3), and (c) (1) thereof and adding new paragraphs (k) through (o) inclusive thereto, and also amends § 249.617 of Part 249 of said Chapter II, as follows:

1. Subdivision (ii) of paragraph (a) (2) of § 240.17a-5 is hereby amended and the last sentence in paragraph (a) (2) is hereby deleted; and as so amended paragraph (a) (2) shall read as set forth below.

2. A new paragraph (a) (3) is hereby adopted as set forth below.

3. The first sentence of paragraph (b) (3) of § 240.17a-5 is hereby amended as set forth below.

4. Subdivision (i) of paragraph (c) (1) of § 240.17a-5 is hereby amended as set forth below.

5. Paragraph (k) through (o) are added as set forth below.

§ 240.17a-5 Reports to be made by certain exchange members, brokers and dealers.

(a) * * *

(2) * * *

(ii) Such reports shall be filed not more than sixty (60) days after the date of the report of financial condition; and

(iii) Reports for any 2 consecutive years shall not be as of dates within 4 months of each other.

(3) The reports provided for in this section shall be filed in duplicate original with the Regional Office of the Commission for the region in which the member, broker, or dealer has his or its principal place of business and except as provided for in paragraph (b) (3) of this section shall be available for examination at the principal office of the member, broker, or dealer.

(b) * * *

(3) If the schedules furnished pursuant to the requirements of items (a), (b), and (c) of Part II of Form X-17A-5 (§ 249.617 of this chapter) are bound separately from the balance of the report, they shall be deemed confidential, except that they shall be available for official use by any official or employee of the United States or any State, by national securities exchanges and national securities associations of which the person filing such report is a member, and by any other person to whom the Commission authorizes disclosure of such information as being in the public interest. * * *

(c) (1) * * *

(i) The copy so included reflects his financial condition as of a date not more than sixty (60) days prior to the filing thereof with the Commission; and * * *

(k) (1) Additional statements to be furnished to the Commission. Except for a broker or dealer who comes within subparagraph (2) of this paragraph, a member, broker, or dealer shall, not more than

¹ See the Commission's "Study of Unsafe and Unsound Practices of Brokers and Dealers" House Doc. 92-231, 92d Congress, 1st sess. (1971), Notice of Submission to Congress in the FEDERAL REGISTER for Jan. 13, 1972, at 37 F.R. 559.

² The Commission has examined the question of whether reports submitted pursuant to paragraphs (k) or (l) of the rule should be treated as confidential. The Commission is satisfied that it may and should treat those reports as confidential.

thirty (30) days after the report required by paragraph (a) (1) of this section is required to be filed, or, in the event of an extension granted under paragraph (d) of this section, not more than 100 days after the date of the financial statements, file with the Regional Office of the Commission for the region in which he has his principal place of business two (2) copies of the statements specified in subparagraph (3) of this paragraph which shall be deemed confidential.

(2) The requirements of subparagraph (1) of this paragraph shall not apply to a broker or dealer: (i) Who is exempt from § 240.15c3-1 under the provisions of paragraph (b) (3) of this section, or (ii) who meets the conditions for the lowest minimum capital requirement set forth in paragraph (a) of § 240.15c3-1, or (iii) who, as introducing member, broker, or dealer forwards all of the transactions of his customers to a clearing member, broker, or dealer on a fully disclosed basis: *Provided*, That such clearing member, broker, or dealer reflects such transactions on its books and records in accounts it carries in the names of such customers and that the introducing member, broker, or dealer does not hold funds or securities for, or owe funds or securities to, customers other than funds and securities promptly transmitted to the clearing member, broker, or dealer or customer, or (iv) who is exempt from § 240.17a-13 under the provisions of paragraph (a) of this section.

(3) The statements to be furnished the Commission in accordance with subparagraph (1) of this paragraph are as follows: A balance sheet based on the report of financial condition required by paragraph (a) (1) of this section; a statement of income, a statement of source and application of funds, a statement of changes in subordinated accounts, and a statement of changes in sole proprietors' capital or the aggregate of partners' capital accounts or each component of corporate stockholders' equity for the period since the date of the immediately preceding report filed pursuant to this section. The report of a newly registered member, broker, or dealer shall cover the period since the date of the statement of financial condition included in the application for registration on Form BD (§ 249.501 of this chapter) unless such newly registered member, broker, or dealer is succeeding to and continuing the business of another member, broker, or dealer, in which event the report shall cover the period since the date of the immediately preceding report filed pursuant to this section by the predecessor member, broker, or dealer. The statements required by this paragraph shall be governed as to form and content by Regulation S-X (Part 210 of this chapter) and shall be certified by a certified public accountant or public accountant who shall

be in fact independent, unless the member, broker, or dealer meets the requirements for exemption from certification in paragraph (b) of this section.

(1) If within 90 days after the close of its calendar or fiscal year a member, broker, or dealer files with the Commission certified unconsolidated financial statements which are equivalent to those required by paragraph (k) (3) of this section, then such statements may be used in lieu of the statements required in paragraph (k) of this section.

(m) Statements to be furnished customers: Every member, broker, or dealer who is subject to paragraph (k) or (l) of this section shall send to its customers (as defined in paragraph (o) of this section) the following information at the same time as it files with the Commission the information required by paragraph (k) of this section:

(1) An unconsolidated balance sheet with appropriate notes including but not limited to the nature, amounts, and maturities of subordinated capitalization which shall be certified if the financial statements furnished in accordance with paragraph (k) (3) of this section are required to be certified.

(2) A statement indicating the amount of the firm's net capital and its required net capital, computed in accordance with § 240.15c3-1 or the net capital rule of the national securities exchange to which the member, broker, or dealer is subject, with an explanation thereof;

(3) If in connection with the most recent report on Form X-17A-5 (§ 249.617 of this chapter) the independent accountant commented on any material inadequacies found to exist in the accounting system, the internal accounting control, procedures for safeguarding securities or the procedures followed in complying with § 240.17a-13 there shall be a statement by the member, broker, or dealer that a copy of such report and comments is currently available for the customer's inspection at his or its principal office and at the principal office of the Commission in Washington, D.C., and the regional office of the Commission in which the member, broker, or dealer has his or its principal place of business;

(4) A statement indicating that Part I of the most recent annual report of the member, broker, or dealer on Form X-17A-5 (§ 249.617 of this chapter) is available for examination and copying at the principal office of the member, broker, or dealer, and at the regional office of the Commission for the region in which the member, broker, or dealer has his or its principal place of business.

(n) Every member, broker, or dealer who is subject to paragraphs (k), (l), and (m) of this section shall furnish to his customers (as defined in paragraph (o) of this section) and shall file with

the Commission and with the national securities exchange and the national securities association of which he is a member not later than 40 days after the end of each calendar quarter, fiscal quarter, or quarter for which the member, broker, or dealer is required to file substantially equivalent information with the national securities exchange or national securities association of which he or it is a member, the information specified in paragraphs (m) (1) and (2) of this section, except that such quarterly information shall not be required to be certified. If the annual report sent to customers is as of the end of any quarter, no quarterly report need be sent for such quarter.

(o) For purposes of paragraphs (m) and (n) of this section the term customer includes any person (other than another member, broker, or dealer, but including a person who is a customer of an introducing member, broker, or dealer who is exempted by subdivision (iii) of paragraph (k) (2) of this section) for or with whom a broker-dealer has effected a securities transaction in a particular month, which month shall be either the month of the balance sheet date or the month following the balance sheet date and in addition, any person for whom the member, broker, or dealer holds securities for safekeeping or as collateral or for whom the member, broker, or dealer carries a free credit balance in the month in which customers are determined for purposes of this section.

§ 249.617 [Amended]

The audit requirements of Form X-17A-5 are hereby amended by deleting the last sentence in the first paragraph therein that reads as follows: "These comments may be submitted in a supplementary certificate and filed pursuant to § 240.17a-5(b) (3) of this chapter."

The effective date of those amendments which require reports to be sent to customers shall be September 30, 1972. Paragraph (k) which requires additional reports to be filed with the Commission annually and those amendments to paragraphs (a) (1) and (c) (1) which extend the time for filing Form X-17A-5 reports shall become effective for calendar and fiscal years ending on or after December 31, 1972.

(Secs. 10(b), 15(c) (1), 15(c) (2), 15(c) (3), 17(a), 23(a), 48 Stat. 891, 895, 897, 901, secs. 3, 4, 8, 49 Stat. 1377, 1379, secs. 2, 5, 52 Stat. 1075, 1076, sec. 7(d), 84 Stat. 1653; 15 U.S.C. 78j(b), 78o(c) (1), 78o(c) (2), 78o(c) (3), 78q(a), 78w(a))

By the Commission.

[SEAL]

RONALD F. HUNT,
Secretary.

JUNE 30, 1972.

[FR Doc. 72-11244 Filed 7-20-72; 8:47 am]

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[43 CFR Parts 4, 17a]

NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS

Proposed Practice and Procedure for Hearings, Decisions, and Adminis- trative Review

Notice is hereby given that, under the authority cited in the proposed regulations set forth below, it is proposed (1) to revise the regulations appearing in Part 17a of Title 43 of the Code of Federal Regulations for purposes of effecting clarifications and adapting the regulations to proposed amendments to Part 17 of this title, published December 9, 1971 (37 F.R. 23491-23494), pursuant to recommendations of an interagency committee for uniform title VI regulations to effectuate the provisions of title VI of the Civil Rights Act of 1964, and (2) to redesignate the revised regulations and incorporate them into the Department Hearings and Appeals Procedures, contained in 43 CFR Part 4, as Subpart I thereof. Thus Part 17a will be vacated.

The proposed regulations reflect the authority delegated by the Secretary of the Interior to the Director, Office for Equal Opportunity, Department of the Interior, to initiate the formal administrative proceedings under Part 17, by the service of a notice of hearing or opportunity for hearing upon the parties concerned, and the authority delegated by the Secretary to the Director, Office of Hearings and Appeals, Office of the Secretary, and to hearing examiners of the Hearings Division of the Office of Hearings and Appeals, to issue decisions for the Department after full opportunity for hearing before such hearing examiners.

As Subpart I of the Department Hearings and Appeals Procedures, the proposed regulations will provide also that, to the extent they are not inconsistent with the rules in Subpart I, the general rules applicable to all types of proceedings before the Hearings Division and the several Appeals Boards of the Office of Hearings and Appeals, contained in Subpart B of Part 4, will be applicable to proceedings under these proposed regulations.

Interested persons are invited to submit written comments, suggestions or objections with respect to the proposed regulations to the Director, Office of Hearings and Appeals, Attention: Special Assistant to the Director (Regulations), 4015 Wilson Boulevard, Arlington, VA 22203, within 30 days from the

date of publication of this notice in the FEDERAL REGISTER.

Dated: July 14, 1972.

CHARLES G. EMLEY,
Deputy Assistant Secretary
of the Interior.

Subpart I—Special Procedural Rules Applicable to Practice and Procedure for Hearings, Decisions, and Administrative Review Under Part 17 of this Title—Nondiscrimination in Federally Assisted Programs of the Department of the Interior—Effectuation of Title VI of the Civil Rights Act of 1964

GENERAL

- Sec.
- 4.800 Scope and construction of rules.
- 4.801 Suspension of rules.
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- 4.803 Computation of time.
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DESIGNATION AND RESPONSIBILITIES OF HEARING EXAMINER

- 4.806 Designation.
 - 4.807 Authority and responsibilities.
- #### APPEARANCE AND PRACTICE
- 4.808 Participation by a party.
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 - 4.827 Depositions.
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 - 4.831 Sanctions.
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PREHEARING

- 4.833 Prehearing conferences.

HEARING

- 4.834 Purpose.
- 4.835 Evidence.
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- Sec.
- 4.842 Proposed findings of fact and conclusions of law.
- 4.843 Record for decision.
- 4.844 Notification of right to file exceptions.
- 4.845 Final review by Secretary.

AUTHORITY: The provisions of this Subpart I issued under 43 CFR 17.8 and 5 U.S.C. 301.

CROSS REFERENCE: See Subpart A for the organization, authority and jurisdiction of the Office of Hearings and Appeals, including its Hearings Division. To the extent they are not inconsistent with these special rules, the general rules applicable to all types of proceedings before the Hearings Division and the several Appeals Boards of the Office of Hearings and Appeals, contained in Subpart B of this part, are applicable also to proceedings under these regulations.

Subpart I—Special Procedural Rules Applicable to Practice and Procedure for Hearings, Decisions, and Administrative Review Under Part 17 of This Title—Nondiscrimination in Federally Assisted Programs of the Department of the Interior Ef- fectuation of Title VI of the Civil Rights Act of 1964

GENERAL

§ 4.800 Scope and construction of rules.

(a) The rules of procedure in this Subpart I supplement Part 17 of this title and are applicable to the practice and procedure for hearings, decisions, and administrative review conducted by the Department of the Interior, pursuant to title VI of the Civil Rights Act of 1964 (section 602, 42 U.S.C. 2000d-1) and Part 17 of this title, concerning nondiscrimination in federally assisted programs in connection with which Federal financial assistance is extended under laws administered in whole or in part by the Department of the Interior.

(b) These regulations shall be liberally construed to secure the just, prompt, and inexpensive determination of all proceedings consistent with adequate consideration of the issues involved and full protection of the rights of all interested parties including the Government.

§ 4.801 Suspension of rules.

Upon notice to all parties, the responsible Department official or the hearing examiner, with respect to matters pending before him, may modify or waive any rule in this part upon his determination that no party will be unduly prejudiced and the ends of justice will thereby be served.

§ 4.802 Definitions.

(a) The definitions set forth in § 17.12 of this title apply also to this subpart.

PROPOSED RULE MAKING

(b) "Director" means the Director, Office for Equal Opportunity, Department of the Interior.

(c) "Hearing examiner" means a hearing examiner designated by the Office of Hearings and Appeals, Office of the Secretary, in accordance with 5 U.S.C. secs. 3105 and 3344.

(d) "Notice" means a notice of hearing in a proceeding instituted under Part 17 of this title and these regulations.

(e) "Party" means a recipient or applicant; the Director; and any person or organization participating in a proceeding pursuant to § 4.808.

§ 4.803 Computation of time.

Except as otherwise provided by law, in computing any period of time under these rules or in an order issued hereunder, the time begins with the day following the act or event, and includes the last day of the period, unless it is a Saturday, Sunday, or Federal legal holiday, or other nonbusiness day, in which event it includes the next following day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day. When the period of time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays and other nonbusiness days shall be excluded in the computation.

§ 4.804 Extensions of time.

A request for extension of time should be made to the designated hearing examiner or other appropriate departmental official with respect to matters pending before him. Such request shall be served on all parties and set forth the reasons for the request. Extensions may be granted upon a showing of good cause by the applicant. Answers to such requests are permitted if made promptly.

§ 4.805 Reduction of time to file documents.

For good cause, the responsible departmental official or the hearing examiner, with respect to matters pending before him, may reduce any time limit prescribed by the rules in this part, except as provided by law or in Part 17 of this title.

DESIGNATION AND RESPONSIBILITIES OF HEARING EXAMINER

§ 4.806 Designation.

Hearings shall be held before a hearing examiner designated by the Chief Hearing Examiner, Hearings Division, Office of Hearings and Appeals.

§ 4.807 Authority and responsibilities.

The hearing examiner shall have all powers necessary to preside over the parties and the proceedings, conduct the hearing, and make decisions in accordance with 5 U.S.C. secs. 554-557. His powers shall include, but not be limited to, the power to:

(a) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(b) Require parties to state their position with respect to the various issues in the proceedings.

(c) Establish rules for media coverage of the proceedings.

(d) Rule on motions and other procedural items in matters before him.

(e) Regulate the course of the hearing, the conduct of counsel, parties, witnesses, and other participants.

(f) Administer oaths, call witnesses on his own motion, examine witnesses, and direct witnesses to testify.

(g) Receive, rule on, exclude, or limit evidence.

(h) Fix time limits for submission of written documents in matters before him.

(i) Take any action authorized by these regulations, by 5 U.S.C. sec. 556, or by other pertinent law.

APPEARANCE AND PRACTICE

§ 4.808 Participation by a party.

Subject to the provisions contained in Part 1 of this subtitle, a party may appear in person, by representative, or by counsel, and participate fully in any proceeding held pursuant to Part 17 of this title and these regulations. A State agency or any instrumentality thereof, a political subdivision of the State or instrumentality thereof, or a corporation may appear by any of its officers or employees duly authorized to appear on its behalf.

§ 4.809 Determination of parties.

(a) The affected applicant or recipient to whom a notice of hearing or a notice of an opportunity for hearing has been mailed in accordance with Part 17 of this title and § 4.815, and the Director, are the initial parties to the proceeding.

(b) Other persons or organizations shall have the right to participate as parties if the final decision could directly and adversely affect them or the class they represent, and if they may contribute materially to the disposition of the proceedings.

(c) Any person or organization wishing to participate as a party under this section shall submit a petition to the hearing examiner within 15 days after the notice has been served. The petition should be filed with the hearing examiner and served on the affected applicant or recipient, on the Director, and on any other person or organization who has been made a party at the time of filing. Such petition shall concisely state: (1) Petitioner's interest in the proceeding, (2) how his participation as a party will contribute materially to the disposition of the proceeding, (3) who will appear for petitioner, (4) the issues on which petitioner wishes to participate, and (5) whether petitioner intends to present witnesses.

(d) The hearing examiner shall promptly ascertain whether there are objections to the petition. He shall then determine whether petitioners have the requisite interest to be a party in the proceedings, as defined in paragraphs (a) and (b) of this section, and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with com-

mon interests, the hearing examiner may request all such petitioners to designate a single representative, or he may recognize one or more of such petitioners to represent all such petitioners. The hearing examiner shall give each such petitioner written notice of the decision on his petition. If the petition is denied, he shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae. The hearing examiner shall give written notice to each party of each petition granted.

(e) Persons or organizations whose petition for party participation is denied may appeal the decision to the Director, Office of Hearings and Appeals, within 7 days of receipt of denial. The Director, Office of Hearings and Appeals, will make the final decision for the Department to grant or deny the petition.

§ 4.810 Complainants not parties.

A person submitting a complaint pursuant to § 17.6 of this title is not a party to the proceedings governed by Part 17 of this title and these regulations, but may petition, after proceedings are initiated, to become an amicus curiae. In any event a complainant shall be advised of the time and place of the hearing.

§ 4.811 Determination and participation of amici.

(a) Any interested person or organization wishing to participate as amicus curiae in the proceeding shall file a petition before the commencement of the hearing. Such petition shall concisely state the petitioner's interest in the hearing and who will represent petitioner.

(b) The hearing examiner will grant the petition if he finds that the petitioner has an interest in the proceedings and may contribute materially to the disposition of the proceedings. The hearing examiner shall give the petitioner written notice of the decision on his petition.

(c) An amicus curiae is not a party and may not introduce evidence at a hearing but may only participate as provided in paragraph (d) of this section.

(d) An amicus curiae may submit a written statement of position to the hearing examiner at any time prior to the beginning of a hearing, and shall serve a copy on each party. He may also file a brief or written statement on each occasion a decision is to be made or a prior decision is subject to review. His brief or written statement shall be filed and served on each party within the time limits applicable to the party whose position he deems himself to support; or if he does not deem himself to support the position of any party, within the longest time limit applicable to any party at that particular stage of the proceedings.

(e) When all parties have completed their initial examination of a witness, any amicus curiae may request the hearing examiner to propound specific questions to the witness. The hearing examiner, in his discretion, may grant any such request if he believes the proposed additional testimony may assist materially in elucidating factual matters at issue.

between the parties and will not expand the issues.

FORM AND FILING OF DOCUMENTS

§ 4.812 Form.

Documents filed pursuant to a proceeding herein shall show the docket description and title of the proceeding, the party or amicus submitting the document, the date signed, and the title, if any, and address of the signatory. The original will be signed in ink by the party representing the party or amicus. Copies need not be signed, but the name of the person signing the original shall be reproduced.

§ 4.813 Filing and service.

(a) All documents submitted in a proceeding shall be served on all parties. The original and two copies of each document shall be submitted for filing. Filings shall be made with the hearing examiner or other appropriate departmental official before whom the proceeding is pending. With respect to exhibits and transcripts of testimony, only originals need be filed.

(b) Service upon a party or amicus shall be made by delivering one copy of each document requiring service in person or by certified mail, return receipt requested, properly addressed with postage prepaid, to the party or amicus or his attorney, or designated representative. Filing will be made in person or by certified mail, return receipt requested, to the hearing examiner or other appropriate departmental official before whom the proceeding is pending.

(c) The date of filing or of service shall be the day when the matter is deposited in the U.S. mail or is delivered in person.

§ 4.814 Certificate of service.

The original of every document filed and required to be served upon parties shall be endorsed with a certificate of service signed by the party or amicus curiae making service or by his attorney or representative, stating that such service has been made, the date of service, and the manner of service.

PROCEDURES

§ 4.815 How proceedings are commenced.

Proceedings are commenced by the Director by mailing to an applicant or recipient a notice of alleged noncompliance with the Act and the regulations thereunder. The notice shall include either a notice of hearing fixing a date therefor or a notice of an opportunity for a hearing as provided in § 17.8 of this title. The notice shall advise the applicant or recipient of the action proposed to be taken, the specific provisions of Part 17 of this title under which the proposed action is to be taken, and the matters of fact or law asserted as the basis of the action.

§ 4.816 Notice of hearing and response thereto.

A notice of hearing shall fix a date not less than 30 days from the date of service of the notice of a hearing on matters

alleged in the notice. If the applicant or recipient does not desire a hearing, he should so state in writing, in which case the applicant or recipient shall have the right to further participate in the proceeding. Failure to appear at the time set for a hearing, without good cause, shall be deemed a waiver of the right to a hearing under section 602 of the Act and the regulations thereunder and consent to the making of a decision on such information as is available which may be presented for the record.

§ 4.817 Notice of opportunity to request a hearing and response thereto.

A notice of opportunity to request a hearing shall set a date not less than 20 days from service of said notice within which the applicant or recipient may file a request for a hearing, or may waive a hearing and submit written information and argument for the record, in which case, the applicant or recipient shall have the right to further participate in the proceeding. When the applicant or recipient elects to file a request for a hearing, a time shall be set for the hearing at a date not less than 20 days from the date applicant or recipient is notified of the date set for the hearing. Failure of the applicant or recipient to request a hearing or to appear at the date set shall be deemed a waiver of the right to a hearing, under section 602 of the Act and the regulations thereunder and consent to the making of a decision on such information as is available which may be presented for the record.

§ 4.818 Answer.

In any case covered by § 4.816 or § 4.817, the applicant or recipient shall file an answer. Said answer shall admit or deny each allegation of the notice, unless the applicant or recipient is without knowledge, in which case the answer shall so state, and the statement will be considered a denial. Failure to file an answer shall be deemed an admission of all allegations of fact in the notice. Allegations of fact in the notice not denied or controverted by answer shall be deemed admitted. Matters alleged in the answer as affirmative defenses shall be separately stated and numbered. The answer under § 4.816 shall be filed within 20 days from the date of service of the notice of hearing. The answer under § 4.817 shall be filed within 20 days of service of the notice of opportunity to request a hearing.

§ 4.819 Amendment of notice or answer.

The Director may amend the notice of hearing or opportunity for hearing once as a matter of course before an answer is filed, and each respondent may amend his answer once as a matter of course not later than 10 days before the date fixed for hearing but in no event later than 20 days from the date of service of his original answer. Other amendments of the notice or of the answer to the notice shall be made only by leave of the hearing examiner. An amended notice shall be answered within 10 days of its service, or within the time for filing

an answer to the original notice, whichever period is longer.

§ 4.820 Consolidated or joint hearings.

As provided in § 17.8(e) of this title, the Secretary may provide for proceedings in the Department to be joined or consolidated for hearing with proceedings in other Federal departments or agencies, by agreement with such other departments or agencies. All parties to any proceedings consolidated subsequently to service of the notice of hearing or opportunity for hearing shall be promptly served with notice of such consolidation.

§ 4.821 Motions.

Motions and petitions shall state the relief sought, the basis for relief and the authority relied upon. If made before or after the hearing itself, these matters shall be in writing. If made at the hearing, they may be stated orally; but the hearing examiner may require that they be reduced to writing and filed and served on all parties. Within 8 days after a written motion or petition is served, any party may file a response to a motion or petition. An immediate oral response may be made to an oral motion. Oral argument on motions will be at the discretion of the hearing examiner.

§ 4.822 Disposition of motions.

The hearing examiner may not grant a written motion or petition prior to expiration of the time for filing responses thereto, but may overrule or deny such motion or petition without awaiting response: *Provided, however,* That pre-hearing conferences, hearings, and decisions need not be delayed pending disposition of motions or petitions. Oral motions and petitions may be ruled on immediately.

§ 4.823 Interlocutory appeals.

Except as provided in § 4.809(e), a ruling of the hearing examiner may not be appealed to the Director, Office of Hearings and Appeals, prior to consideration of the entire proceeding by the hearing examiner unless permission is first obtained from the Director, Office of Hearings and Appeals, and the examiner has certified the interlocutory ruling on the record or abused his discretion in refusing a request to so certify. Permission will not be granted except upon a showing that the ruling complained of involves a controlling question of law and that an immediate appeal therefrom may materially advance the final decision. An interlocutory appeal shall not operate to suspend the hearing unless otherwise ordered by the Director, Office of Hearings and Appeals. If an appeal is allowed, any party may file a brief within such period as the Director, Office of Hearings and Appeals, directs. Upon affirmation, reversal, or modification of the examiner's interlocutory ruling or order, by the Director, Office of Hearings and Appeals, the case will be remanded promptly to the examiner for further proceedings.

§ 4.824 Exhibits.

Proposed exhibits shall be exchanged at the prehearing conference, or otherwise prior to the hearing, if the hearing examiner so directs. Proposed exhibits not so exchanged in accordance with the hearing examiner's order may be denied admission as evidence. The authenticity of all exhibits submitted prior to the hearing, under direction of the hearing examiner, will be deemed admitted unless written objection thereto is filed and served on all parties, or unless good cause is shown for failure to file such written objection.

§ 4.825 Admissions as to facts and documents.

Not later than 15 days prior to the date of the hearing any party may serve upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in, and exhibited with, the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters as to which an admission is requested shall be deemed admitted, unless within a period of 10 days, the party to whom the request is directed serves upon the requesting party a statement either (a) denying specifically the matters as to which an admission is requested, or (b) setting forth in detail the reasons why he cannot truthfully either admit or deny such matters.

§ 4.826 Discovery.

(a) *Methods.* Parties may obtain discovery as provided in these rules by depositions, written interrogatories, production of documents, or other items; or by permission to enter property, for inspection and other purposes.

(b) *Scope.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the hearing.

(c) *Protective orders.* Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the hearing examiner may make any order which justice requires to limit or condition discovery in order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

(d) *Sequence and timing.* Methods of discovery may be used in any sequence. The fact that a party is conducting discovery shall not operate to delay any other party's discovery.

(e) *Time limit.* Discovery by all parties will be completed within such time as the examiner directs, from the date the notice of hearing is served on the applicant or recipient.

§ 4.827 Depositions.

(a) A party may take the testimony of any person, including a party, by deposition upon oral examination. This may be done by stipulation or by notice, as set forth in paragraph (b) of this section. On motion of any party or other person upon whom the notice is served, the hear-

ing examiner may for cause shown enlarge or shorten the time for the deposition, change the place of the deposition, limit the scope of the deposition or quash the notice. Depositions of persons other than parties or their representatives shall be upon consent of the deponent.

(b) (1) The party will give reasonable notice in writing to every other party of the time and place for taking depositions, the name and address of each person to be examined, if known, or a general description sufficient to identify him or the particular class or group to which he belongs.

(2) The notice to a deponent may be accompanied by a request for the production of documents and tangible things at the taking of the deposition.

(3) A party may name as the deponent a corporation, partnership, association, or governmental agency and may designate a particular person within the organization whose testimony is desired and the matters on which examination is requested. If no particular person is named, the organization shall designate one or more agents to testify on its behalf, and may set forth the matters on which each will testify. The persons so designated shall testify as to matters known or reasonably available to the organization.

(c) Examination and cross-examination of witnesses may proceed as permitted at the hearing. The witness shall be placed under oath by a disinterested person qualified to administer oaths by the laws of the United States or of the place where the examination is held, and the testimony taken by such person shall be recorded verbatim.

(d) During the taking of a deposition a party or deponent may request suspension of the deposition on grounds of bad faith in the conduct of the examination, annoyance, embarrassment, oppression of a deponent or party or improper questions propounded. The deposition will then be adjourned. However, the objecting party or deponent must immediately move the hearing examiner for a ruling on his objections to the deposition conduct or proceedings. The hearing examiner may then limit the scope or manner of the taking of the deposition.

(e) The officer shall certify the deposition and promptly file it with the hearing examiner. Documents or true copies of documents and other items produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to the deposition.

(f) The party taking the deposition shall give prompt notice of its filing to all other parties.

§ 4.828 Use of depositions at hearing.

(a) Any part or all of a deposition so far as admissible under § 4.835 applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof as follows:

(1) Any deposition may be used for contradiction or impeachment of the deponent as a witness.

(2) The deposition of a party, or of an agent designated to testify on behalf of a party, may be used by an adverse party for any purpose.

(3) The deposition of any witness may be used for any purpose if the party offering the deposition has been unable to procure the attendance of the witness because he is dead; or if the witness is at a greater distance than 100 miles from the place of hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or if the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or, upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(b) If only part of a deposition is offered in evidence, the remainder becomes subject to introduction by any party.

(c) Objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

§ 4.829 Interrogatories to parties.

(a) Any party may serve upon any other party written interrogatories after the notice of hearing has been filed. If the party served is a corporation, partnership, association, or governmental agency, an agent shall furnish such information as is available to the party.

(b) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney or other representative making them. Answers and objections shall be made within 30 days after the service of the interrogatories. The party submitting the interrogatories may move for an order under § 4.831 with respect to any objection to or other failure to answer an interrogatory.

(c) Interrogatories shall relate to any matter not privileged which is relevant to the subject matter of the hearing.

§ 4.830 Production of documents and things and entry upon land for inspection and other purposes.

(a) After the notice of hearing has been filed, any party may serve on any other party a request to produce and/or permit the party, or someone acting on his behalf, to inspect and copy any designated documents, phonorecords, and other data compilations from which information can be obtained and which are in the possession, custody, or control of the party upon whom the request is served. If necessary, translation of data

compilations shall be done by the party furnishing the information.

(b) After the notice of hearing has been filed, any party may serve on any other party a request to permit entry upon designated property in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying or photographing, testing, or sampling the property or any designated object.

(c) Each request shall set forth with reasonable particularity the items to be inspected and shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d) The party upon whom the request is served shall respond within 15 days after the service of the request. The response shall state, with respect to each item, that inspection and related activities will be permitted as requested, unless there are objections in which case the reasons for each objection shall be stated. The party submitting the request may move for an order under § 4.831 with respect to any objection to or other failure to respond.

§ 4.831 Sanctions.

(a) A party, upon reasonable notice to other parties and all persons affected thereby, may move for an order as follows:

(1) If a deponent fails to answer a question propounded or submitted under § 4.827(c), or a corporation or other entity fails to make a designation under § 4.827(b)(3), or a party fails to answer an interrogatory submitted under § 4.829, or if a party, under § 4.830 fails to respond that inspection will be permitted or fails to permit inspection, the discovering party may move for an order compelling an answer, a designation, or inspection.

(2) An evasive or incomplete answer is to be treated as a failure to answer.

(b) If a party or an agent designated to testify fails to obey an order to permit discovery, the hearing examiner may make such orders as are just, including:

(1) That the matters regarding which the order was made or any other designated facts shall be established in accordance with the claim of the party obtaining the order;

(2) Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence.

(c) If a party or an agent designated to testify fails after proper service (1) to appear for his deposition, (2) to serve answers or objections to interrogatories submitted under § 4.829 or (3) to serve a written response to a request for inspection, submitted under § 4.830, the hearing examiner on motion may make such orders as are just, including those authorized under subparagraphs (1) and (2) of paragraph (b) of this section.

§ 4.832 Ex parte communications.

(a) Written or oral communications involving any substantive or procedural

issue in a matter subject to these proceedings, directed to the hearing examiner, the Director, or the Director, Office of Hearings and Appeals, shall be deemed ex parte communications and are not to be considered part of any record or the basis for any official decision, unless the communication is made by motion pursuant to these rules.

(b) The hearing examiner shall not consult any person, or party, on any fact in issue or on the merits of the matter before him unless upon notice and opportunity for all parties to participate.

(c) No employee or agent of the Federal Government engaged in the investigation and prosecution of a proceeding governed by these rules shall participate or advise in the rendering of any recommended or final decision, except as witness or counsel in the proceeding.

PREHEARING

§ 4.833 Prehearing conferences.

(a) Within 15 days after the answer has been filed, the hearing examiner will establish a prehearing conference date for all parties including persons or organizations whose petition requesting party status has not been ruled upon. Written notice of the prehearing conference shall be sent by the hearing examiner.

(b) At the prehearing conference the following matters, among others, shall be considered: (1) Simplification and delineation of the issues to be heard; (2) stipulations; (3) limitation of number of witnesses; and exchange of witness lists; (4) procedure applicable to the proceeding; (5) offers of settlement; and (6) scheduling of the dates for exchange of exhibits. Additional prehearing conferences may be scheduled at the discretion of the hearing examiner, upon his own motion or the motion of a party.

HEARING

§ 4.834 Purpose.

(a) The hearing is directed primarily to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. A hearing will be held only in cases where issues of fact must be resolved in order to determine whether the applicant or recipient has failed to comply with one or more applicable requirements of title VI of the Civil Rights Act of 1964 (sec. 602, 42 U.S.C. 2000d-1) and Part 17 of this title. However, this shall not prevent the parties from entering into a stipulation of the facts.

(b) If all facts are stipulated, the proceedings shall go to conclusion in accordance with Part 17 of this title and the rules in this subpart.

(c) In any case where it appears from the answer of the applicant or recipient to the notice of hearing or notice of opportunity to request a hearing, from his failure timely to answer, or from his admissions or stipulations in the record that there are no matters of material fact in dispute, the hearing examiner may enter an order so finding, vacating the hearing date if one has been set, and fixing the time for the submission of evidence by the Government for the record. Thereafter, the proceedings shall go to

conclusion in accordance with Part 17 of this title and the rules in this subpart. An appeal from such order may be allowed in accordance with the rules for interlocutory appeal in § 4.823.

§ 4.835 Evidence.

Formal rules of evidence will not apply to the proceeding. Irrelevant, immaterial, unreliable, and unduly repetitious evidence will be excluded from the record of a hearing. Hearsay evidence shall not be inadmissible as such.

§ 4.836 Official notice.

Whenever a party offers a public document, or part thereof, in evidence, and such document, or part thereof, has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered for official notice as a public document item by specifying the document or relevant part thereof. Official notice may also be taken of other matters, at the discretion of the hearing examiner.

§ 4.837 Testimony.

Testimony shall be given under oath by witnesses at the hearing. A witness shall be available for cross-examination, and, at the discretion of the hearing examiner, may be cross-examined without regard to the scope of direct examination as to any matter which is material to the proceeding.

§ 4.838 Objections.

Objections to evidence shall be timely, and the party making them shall briefly state the ground relied upon.

§ 4.839 Exceptions.

Exceptions to rulings of the hearing examiner are unnecessary. It is sufficient that a party, at the time the ruling of the hearing examiner is sought, makes known the action which he desires the hearing examiner to take, or his objection to an action taken, and his ground therefor.

§ 4.840 Offer of proof.

An offer of proof made in connection with an objection taken to any ruling of the hearing examiner excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony. If the excluded evidence consists of evidence in written form or consists of reference to documents, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof.

§ 4.841 Official transcript.

An official reporter will be designated for all hearings. The official transcripts of testimony and argument taken, together with any exhibits, briefs, or memoranda of law filed therewith, shall be filed with the hearing examiner. Transcripts may be obtained by the parties and the public from the official reporter at rates not to exceed the applicable rates fixed by the contract with the reporter. Upon notice to all parties,

the hearing examiner may authorize such corrections to the transcript as are necessary to accurately reflect the testimony.

POSTHEARING PROCEDURES

§ 4.842 Proposed findings of fact and conclusions of law.

Within 30 days after the close of the hearing each party may file, or the hearing examiner may request, proposed findings of fact and conclusions of law together with supporting briefs. Such proposals and briefs shall be served on all parties and amici. Reply briefs may be submitted within 15 days after receipt of the initial proposals and briefs. Reply briefs should be filed and served on all parties and amici.

§ 4.843 Record for decision.

The hearing examiner will make his decision upon the basis of the record before him. The transcript of testimony, exhibits, and all papers, documents, and requests filed in the proceedings, shall constitute the record for decision and may be inspected and copied.

§ 4.844 Notification of right to file exceptions.

The provisions of § 17.9 of this title govern the making of decisions by hearing examiners, the Director, Office of Hearings and Appeals, and the Secretary. A hearing examiner shall, in any initial decision made by him, specifically inform the applicant or recipient of his right under § 17.9 of this title to file exceptions with the Director, Office of Hearings and Appeals. In instances in which the record is certified to the Director, Office of Hearings and Appeals, or he reviews the decision of a hearing examiner, he shall give the applicant or recipient a notice of certification or notice of review which specifically informs the applicant or recipient that, within a stated period, which shall not be less than 30 days after service of the notice, he may file briefs or other written statements of his contentions.

§ 4.845 Final review by Secretary.

Paragraph (f) of § 17.9 of this title requires that any final decision of a hearing examiner or of the Director, Office of Hearings and Appeals, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under Part 17 of this title or the Act, shall be transmitted to the Secretary. The applicant or recipient shall have 20 days following service upon him of such notice to submit to the Secretary exceptions to the decision and supporting briefs or memoranda suggesting remission or mitigation of the sanctions proposed. The Director shall have 10 days after the filing of the exceptions and briefs in which to reply.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 32]

MOHAIR TOP

Proposed Standards for Grades

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553 that pursuant to the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 et seq.), the Department proposes to promulgate official standards of the United States for grades of mohair top (7 CFR Part 32), provisions governing methods for determining the grade of mohair top, and provisions governing the distribution of samples representative of official mohair top grade standards as set forth below.

Statement of considerations. The mohair top grade standards are proposed under authority of the Agricultural Marketing Act of 1946 which provides for issuance of official U.S. grade standards to designate different levels of quality of agricultural products for the voluntary use of producers, buyers, and others.

Based largely on information developed by the U.S. Department of Agriculture, specifications for grades of mohair top were originally issued in 1955 by the American Society for Testing and Materials (ASTM). Some buyers, combing mills, manufacturers, and spinners have used these specifications or variations of them, while others have maintained their own requirements for the various grades.

In 1967 and 1968 a study was conducted by the Department in cooperation with the mohair industry and ASTM in which fineness and variability measurement data were gathered on several hundred lots of mohair top. As a result of these investigations, ASTM revised its standard specifications for grades of mohair top in 1969. The official mohair top grade standards now being proposed are identical with those adopted by the ASTM and are coordinated with the official standards for grades of grease mohair which were adopted August 1, 1971. These grade standards would provide a universally understood language for identifying differences in mohair top and thereby facilitate trade among dealers, manufacturers, topmakers, spinners, and international traders.

The proposed official mohair top standards as outlined herein provide specifications in terms of average fiber diameter and fiber diameter dispersion for 12 grades: Finer than 40's, 40's, 36's, 32's, 30's, 28's, 26's, 24's, 22's, 20's, 18's, and coarser than 18's. If the fiber diameter dispersion does not meet the specifications for the grade to which the average fiber diameter corresponds, the mohair top is assigned a dual-grade designation. In such cases, the first designation would indicate the grade based on average fiber diameter and the second designation would be that of the next coarser grade.

The proposed standards have been developed after extensive testing and examination of current mohair top production. In addition to the cooperative study with the Mohair Council of America, discussions were held with trade groups and other segments of the mohair industry. Their opinions and suggestions have been given careful consideration in the development of these standards.

It is proposed to establish official standards for grades of mohair top as follows:

OFFICIAL STANDARDS OF THE UNITED STATES FOR GRADES OF MOHAIR TOP

§ 32.100 Official mohair top grades.

The official grades for mohair top and the specifications for each shall be those set forth in table 1. However, mohair top which qualifies for a grade on the basis of its average fiber diameter but does not meet the fiber diameter dispersion requirement for that same grade shall be assigned a dual-grade designation. In such cases, the first designation shall indicate the grade based on average fiber diameter and the second designation shall be that of the next coarser grade.

TABLE 1—SPECIFICATIONS FOR THE OFFICIAL GRADES OF MOHAIR TOP

Grade	Limits for average diameter (microns)	Fiber diameter dispersion: percent ¹							Approximate number of fiber measurements ²
		30 microns and under, minimum	40 microns and under, minimum	50 microns and under, minimum	30.1 microns and over, maximum	40.1 microns and over, maximum	50.1 microns and over, maximum	60.1 microns and over, maximum	
Finer than 40's	Under 23.55	80			20	1			1,000
40's	23.55 to 25.54	74			20	4			1,000
36's	25.55 to 27.54	67			33	6			1,200
32's	27.55 to 29.54	57			43	8			1,200
30's	29.55 to 31.54	47			53	13			1,400
28's	31.55 to 33.54		80		20		3		1,400
26's	33.55 to 35.54		73			27	5		1,600
24's	35.55 to 37.54		64			36	8		1,600
22's	37.55 to 39.54		56			44	13		1,800
20's	39.55 to 41.54			82			18	6	2,200
18's	41.55 to 43.54			77			23	8	2,200
Coarser than 18's	Over 43.54								2,600

¹ The 2d maximum percent shown for any grade is a part of, and not in addition to, the 1st maximum percent. In each grade, the minimum percent and the 1st maximum percent total 100 percent.

² The number of fibers to measure for each test shall be the number needed to attain confidence limits of the mean within ± 0.40 micron at a probability of 95 percent. The approximate number of fibers for the grades listed above may serve as a guide to the number of measurements needed to meet the required confidence limits.